ESTTA Tracking number: **ESTTA674200**

Filing date: **05/26/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057941
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Date	05/26/2015
Attachments	Clockwork - Motion for Summary Judgment.pdf(14170 bytes) Clockwork - Memo In Supp of Mot for Summ J.pdf(61622 bytes) Active_67408098_1_Yohn Declaration.PDF(1181783 bytes) Active_67346054_1_Faust Declaration & Exhibits.PDF(951484 bytes) Active_67346058_1_DeFord Declaration Exhibits Part 1.PDF(3109082 bytes) Active_67346057_1_DeFord Declaration Exhibits Part 2 - Ex.6.PDF(779767 bytes) Active_67346056_1_DeFord Declaration Exhibits Part 3.PDF(5443778 bytes) Active_67396173_1_Crew Declaration.PDF(577347 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CLOCKWORK IP, LLC	)	
	)	
Petitioner,	)	
	)	
v.	)	**Cancellation No. 92057941**
	)	**Reg. No. 3,618,331**
BARNABY HEATING & AIR, and McAFEE HEATING AND AIR CONDITIONING CO., INC.	)	
	)	
Respondents.	)	

PETITIONER CLOCKWORK IP, LLC'S MOTION FOR SUMMARY JUDGMENT

Petitioner Clockwork IP, LLC ("Clockwork"), by counsel, pursuant to section 2.127(e) of title 37 of the Code of Federal Regulations and Federal Rule of Civil Procedure 56, respectfully moves the Board to enter summary judgment in its favor and to cancel U.S. Reg. No. 3,618,331. As demonstrated in Clockwork's Memorandum of Points & Authorities in Support of its Motion for Summary Judgment and its accompanying exhibits, there are no material questions of fact, and Clockwork is entitled to judgment as a matter of law on its fraud claim because Respondent Barnaby Heating & Air procured U.S. Reg. No. 3,618,331 by committing fraud on the United States Patent and Trademark Office. That registration is therefore void ab initio and must be cancelled.

Moreover, due to the fast-approaching pretrial disclosure deadline and start of Petitioner's trial testimony period, Petitioner respectfully requests that the Board stay proceedings pending resolution of this dispositive motion, or alternatively that the Board conduct an expedited review of this motion.

Respectfully submitted,

CLOCKWORK IP, LLC

Filed via ESTTA: May 26, 2015 By: /Brad R. Newberg/

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CERTIFICATE OF SERVICE

On May 26, 2015, in addition to this document being filed via ESTTA, it was sent by first class mail to the following counsel of record:

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CLOCKWORK IP, LLC	)	
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Petitioner,	)	
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v.	)	**Cancellation No. 92057941**
	)	**Reg. No. 3,618,331**
BARNABY HEATING & AIR, and McAFEE HEATING AND AIR CONDITIONING CO., INC.	)	
	)	
Respondents.	)	

PETITIONER CLOCKWORK IP, LLC'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Petitioner Clockwork IP, LLC ("Clockwork"), by counsel, states the following in support of its Motion for Summary Judgment:

INTRODUCTION

Respondent Barnaby Heating and Air ("Barnaby") obtained the registration for the COMFORTCLUB Mark embodied in U.S. Reg. No. 3,618,331 (the "BARNABY Mark" or the "Registration") by committing fraud on the United States Patent and Trademark Office ("USPTO"). It twice falsely declared – with full knowledge of the consequences associated with making a false statement – that Barnaby owned the BARNABY Mark and that no other entity possessed rights in a mark identical or confusingly similar to the BARNABY Mark.

At the close of discovery, the record before the Board establishes conclusively that both of those statements are false, and that Barnaby knew, or at a minimum should have known, of their falsity at the times it made both statements. As a result, the Registration is void ab initio and Clockwork is entitled to judgment as a matter of law on its fraud claim.[1]

BACKGROUND

Petitioner Clockwork IP, LLC is an intellectual property holding company that owns the COMFORTCLUB Mark (the "CLOCKWORK Mark"). (Decl. of Rick Yohn ("Yohn Decl.") ¶ 5.) Since at least as early as 2003, and possibly as early as 2001, Clockwork has licensed the CLOCKWORK Mark to the franchisees of Clockwork's sister entity, One Hour Air Conditioning Franchising, LLC (the "OHAC franchisees"), as well as to the affinity members of AirTime500, LLC, which is a membership organization operated by Clockwork's former sister entity, Success Group International ("SGI"), for use in connection with electrical, plumbing, and

[1] While there are significant additional reasons based on the record (not presented here) why the BARNABY Mark should be cancelled, including significant additional evidence related to Barnaby's fraud, Petitioner brings this motion on very specific indisputable grounds.

heating and air conditioning services.[2] (Yohn Decl. ¶¶ 6–7; *see also* Decl. of Robin Faust ("Faust Decl.") ¶ 3.) Between 2003 and 2008, Clockwork licensed the CLOCKWORK Mark to at least 100 OHAC franchisees, and from 2006 to 2008, it licensed that mark to up to seven Texas OHAC franchisees. (Yohn Decl. ¶¶ 7–8.)

Clockwork is also the owner of the pending U.S. Trademark Application Serial No. 85/880,911, which it filed with the USPTO on March 20, 2013, to register the CLOCKWORK Mark in connection with "prepaid services for heating, ventilating and air conditioning systems" in International Class 36 and for "repair, maintenance, and installation services in the field of plumbing, heating, ventilation, and air conditioning" in International Class 37.[3] (*See* Ex. 1 to Decl. of Amanda DeFord ("DeFord Decl.").) On May 21, 2013, the Examining Attorney issued an Office Action, denying Clockwork's application on the ground that the CLOCKWORK Mark was confusingly similar to the previously registered BARNABY Mark. (*See* May 21, 2013 Office Action Outgoing, *available at* tdsr.uspto.gov.)

Clockwork was shocked. Barnaby had been a member of the SGI membership organization, AirTime500, since August 2007. (Nighthawk AirTime Member Agreement ("Nighthawk Agreement"), Ex. 2 to DeFord Decl.) Its membership provided Barnaby with a license to use the CLOCKWORK Mark in connection with its heating and air conditioning

[2] Clockwork and SGI are no longer related entities. However, they were related during the key events in this matter. (Faust Decl. ¶ 3.)

[3] Barnaby has previously attempted to argue that Clockwork abandoned its application and therefore does not have standing in this case. But that argument ignores that Clockwork filed a request to revive the CLOCKWORK Mark application, which the USPTO granted on December 12, 2014. (*See* Ex. 1 to DeFord Decl.; *see also* Dec. 12, 2014 Notice of Revive Application, *available at* tsdr.uspto.gov.) It also ignores that, as demonstrated below, Barnaby failed to deny Request for Admission No. 37, thus conclusively admitting that its standing argument is without merit. *See, e.g.*, *Fox Rest. Concepts, LLC v. Sunshine C&C, Inc.*, No. 91208911, 2014 WL 5908011, at *1 (T.T.A.B. Oct. 31, 2014); Fed. R. Civ. P. 36(a).

services. (Faust Decl. ¶ 3.) It did not give Barnaby ownership over the mark or any intellectual property rights at all; it was just a regular member. (*Id.*; Nighthawk Agreement, Ex. 2 to DeFord Decl.) In fact, the Nighthawk AirTime Membership Agreement that Barnaby signed, through its owner and principal partner Charles Barnaby, made it explicit that "AirTime[, not Barnaby,] wholly owns and/or has protectable legal rights in and to the AirTime Resources whether (a) the legal protection derives from being confidential, proprietary, or trade secret information of AirTime, (b) the AirTime Resources are subject to copyright, trademark, tradename, and/or patent rights of AirTime, and/or (c) the AirTime Resources are otherwise protected by law or by the terms of this Agreement." (Nighthawk Agreement, Ex. 2 to DeFord Decl.) Barnaby further agreed to "[n]ot use any or all of the AirTime Resources for any purpose other than [its] valid participation in the AirTime program" and acknowledged that "nothing in this Agreement shall be construed as conveying to [Barnaby] (i) any right, title, or interest or copyright in or to any AirTime Resources." *Id.*

Yet, on March 13, 2008, after being an AirTime500 affinity member, having access to the AirTime500 Resources, and being in regular contact with numerous SGI representatives, including SGI coach, Robin Faust, for over seven months, Barnaby filed an application to register the BARNABY Mark, in violation of the Nighthawk Agreement. (Mar. 13, 2008 Application to Register BARNABY Mark ("Barnaby Appl."), Ex. 3 to DeFord Decl.; Faust Decl. ¶¶ 4, 6–8; Exs. A–C to Faust Decl.) In support of that application, Barnaby knowingly made the false material statements that Barnaby was "the owner of the trademark/service mark sought to be registered" and that "no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto" as to be likely to cause confusion. (*See* Barnaby Appl., Ex. 3 to DeFord Decl.)

Around the same time, specifically on March 17, 2008, Mr. Barnaby attended the SGI AirTime 500 Expo and Senior Sales Technician class – where SGI/AirTime discussed the benefits of their program, including use of the CLOCKWORK Mark. (Decl. of Chelsea Crew ("Crew Decl.") ¶¶ 3–4; Ex. 1 to Crew Decl.; Barnaby's Apr. 16, 2015 Discovery Responses ("Apr. 16 Disco. Resp."), Ex. 5 to DeFord Decl. (response to Interrogatory No. 5 wherein Barnaby admits that Mr. Barnaby attended the Senior Tech class in approximately March 10-15, 2008).) As a requirement for attending that class, Mr. Barnaby signed an agreement to not share or use anything learned during the course. (*See* Ex. 1 to Crew Decl.) Then a few months later, on August 27, 2008, Barnaby knowingly made the same material false statements as described above in response to an office action that refused registration for failure to provide an acceptable specimen of use. (*See* Aug. 27, 2008 Response to Office Action ("Resp. to OA"), Ex. 4 to DeFord Decl.; Apr. 16 Disco. Resp., Ex. 5 to DeFord Decl. (response to Interrogatory No. 5); Ex. 6 to DeFord Decl. (containing documents produced by Barnaby that show Charles Barnaby attended at the SGI Airtime500 Expo in March 2008).) Having managed to pull the wool over the USPTO's eyes, Barnaby was issued the Registration that was recently cited against Clockwork's application to register the CLOCKWORK Mark.

Knowing that it possesses superior rights in COMFORTCLUB and that Barnaby must have committed fraud on the USPTO to obtain the Registration, Clockwork filed the above-captioned cancellation proceeding. Now, with discovery closed and a record that irrefutably establishes Barnaby's fraud on the USPTO, Clockwork seeks judgment as a matter of law on its fraud claim.

STANDARD OF REVIEW

A petitioner is "entitled to summary judgment when it has demonstrated that there are no genuine issues as to any material fact, and that it is entitled to judgment as a matter of law." *Medinol Ltd. v. Neuro Vasx, Inc.*, 67 U.S.P.Q.2d (BNA) 1205, 1208 (T.T.A.B. 2003); Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Although "[t]he evidence must be viewed in a light most favorable to the nonmoving party, and all justifiable inferences are to be drawn in the nonmovant's favor," *Medinol*, 67 U.S.P.Q.2d (BNA) at 1208, the mere existence of a factual dispute is not sufficient to avoid summary judgment; a dispute is "genuine" only if a reasonable fact-finder could find for the respondent, and it is "material" only if it could affect the outcome of the cancellation proceeding. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *see also Kipling Apparel Corp. v. Rich*, No. 91170389, 2007 WL 1207190, at *2 (T.T.A.B. Apr. 16, 2007). Moreover, "[t]he nonmoving party may not rest on the mere allegations of its pleadings and assertions of counsel, but must designate specific portions of the record or produce additional evidence showing the existence of a genuine issue of material fact for trial." *Fram Trak Indus., Inc. v. Wiretracks, LLC*, 77 U.S.P.Q.2d (BNA) 2000, 2004 (T.T.A.B. 2006).

ARGUMENT

At the close of discovery – and without Clockwork needing to introduce barely any of its own affirmative evidence – the indisputable material facts before the Board conclusively establish that Barnaby procured the Registration by committing fraud on the USPTO. The Registration is therefore void ab initio and must be cancelled. *See, e.g.*, *Hurley Int'l LLC v. Volta*, 82 U.S.P.Q.2d (BNA) 1339 (T.T.A.B. 2007).

"Fraud in procuring a trademark registration occurs when an applicant for registration knowingly makes false, material representations of fact in connection with an application to register." *Kipling*, 2007 WL 1207190, at *2. *See also Sierra Sunrise Vineyards v. Montelvini S.P.A.*, No. 92048154, 2008 WL 4371318, at *2 (T.T.A.B. Sept. 10, 2008); *Medinol*, 67 U.S.P.Q.2d (BNA) at 1209; *First Int'l Servs. Corp. v. Chuckles Inc.*, 5 U.S.P.Q.2d (BNA) 1628, 1634 (T.T.A.B. 1988). Although an intent to deceive is a necessary prerequisite to a finding of fraud, "[t]he appropriate inquiry is . . . not into the registrant's subjective intent, but rather into the objective manifestations of that intent." *Medinol*, 67 U.S.P.Q.2d (BNA) at 1209. *See also Chuckles*, 5 U.S.P.Q.2d (BNA) at 1636 ("[W]e recognize that it is difficult, if not impossible, to prove what occurs in a person's mind, and that intent must often be inferred from the circumstances and related statement made by that person."). Put differently, fraud occurs where the applicant "makes material representations of fact in its declaration which it knows or should know to be false or misleading." *Medinol*, 67 U.S.P.Q.2d (BNA) at 1209; *Sierra Sunrise*, 2008 WL 4371318, at *3 ("[P]roof of specific intent is not required, rather, fraud occurs when an applicant or registrant makes a false material representation that the applicant or registrant knew or should have known was false." (citation and internal quotation marks omitted)).

Applying that framework here, there is no question that Barnaby committed fraud on the USPTO when seeking to register the BARNABY Mark. Specifically, the record irrefutably establishes that Mr. Barnaby knowingly made, at a minimum, the following two false, material representations in support of its initial application on March 13, 2008, and again in support of a response to an office action on August 27, 2008: (1) that Barnaby was "the owner of the trademark/service mark sought to be registered," and (2) that "no other person, firm, corporation, or association has the right to use the mark in commerce, either in identical form thereof or in

such near resemblance thereto as to be likely . . . to cause confusion, or to cause mistake, or to deceive" (collectively, the "Barnaby Statements"). (*See* Barnaby's Appl., Ex. 3 to DeFord Decl.; Resp. to OA, Ex. 4 to DeFord Decl.) Given that Barnaby itself was a non-exclusive licensee of the CLOCKWORK Mark at the time he registered the identical BARNABY Mark, it is hard to imagine a more conclusive case of fraud. (*See* Faust Decl. ¶ 3; Yohn Decl. ¶¶ 6–9.)

As an initial point, there is no dispute that the Barnaby Statements are "material representations" because ownership of a mark is a prerequisite to registration and the existence of an identical or confusingly similar mark could result in denial of the application. *See, e.g.* 15 U.S.C. § 1051 (permitting only an *owner* to seek registration of a trademark); *id.* § 1052(d) (prohibiting registration of a mark that is identical or confusing similar to a senior mark). Moreover, there can be no dispute that the record establishes that the Barnaby Statements are false and that Barnaby knew, or should have known, that the statements were false at the time it made them.

In fact, Barnaby has conceded those precise points in this case. As the Board is well-aware, Barnaby has consistently demonstrated an unwillingness to respond timely or completely to Clockwork's First Set of Requests for Production, First Set of Interrogatories, and First Set of Requests for Admission, including the most recent attempts to avoid its discovery obligations that are discussed more fully in Clockwork's Motion for Discovery Sanctions and Entry of Judgment. Most pertinent here is Barnaby's failure on three separate occasions to respond to several of Clockwork's Requests for Admission ("RFA"). (*See* Pet'r's Requests for Admission ("Petr's RFAs"), Ex. 8 to DeFord Decl.; Apr. 16 Disco. Resp., Ex. 5 to DeFord Decl.; Barnaby's Sept. 24, 2014 Supplemental Discovery Responses ("Sept. 24 Disco. Resp."), Ex. 10 to DeFord

Decl.; Barnaby's July 15, 2014 Discovery Responses ("July 15 Disco. Resp."), Ex. 9 to DeFord Decl.)

Specifically, on July 15, 2014, Barnaby served its first responses to Clockwork's RFAs. In those responses, Barnaby failed entirely to answer RFA Nos. 36 to 45. (July 15 Disco. Resp., Ex. 9 to DeFord Decl.) After Clockwork's prior counsel raised several other discovery deficiencies with Barnaby's counsel, Barnaby supplemented its discovery responses on September 24, 2014, but once again completely failed to respond to RFA Nos. 36 to 45. (Sept. 24 Disco. Resp., Ex. 10 to DeFord Decl.) And finally, on April 16, 2015, in response to the Board's March 11, 2015 Order granting Petitioner's Motion to Compel on various discovery issues, Barnaby served its most recent discovery responses to Petitioner's Interrogatories, Requests for Production and Request for Admission. Despite serving responses to RFA Nos. 1 to 35, once again, Barnaby failed entirely to respond to RFA Nos. 36 to 45. (Apr. 16 Disco. Resp., Ex. 5 to DeFord Decl.)

It is well-settled that the failure to respond or otherwise deny an RFA results in an admission and "conclusively establishes the matter that is the subject of that requests." *Fox Rest. Concepts, LLC v. Sunshine C&C, Inc.*, No. 91208911, 2014 WL 5908011, at *1 (T.T.A.B. Oct. 31, 2014) (internal quotation marks omitted). *See also, e.g., Fram Trak*, 77 U.S.P.Q.2d (BNA) at 2005; Fed. R. Civ. P. 36(a). That "conclusive effect applies to those admissions . . . established by default, even if the matters admitted relate to material facts that defeat a party's claim." *Fox Rest.*, 2014 WL 5908011, at *1. As a result, Barnaby's failure to respond on multiple occasions over the course of several months to RFA Nos. 36 to 45 means that Barnaby has admitted that:

- "Respondent's Eighth Affirmative Defense in paragraph 48 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence," or in other words that Barnaby's claim that it "has not committed, and is not now committing, fraud or any other act that would give rise to the cancellation of Barnaby's '331 trademark, or give

rise to any liability to Clockwork," is without merit, (*see* Petr's RFAs, Ex. 8 to DeFord Decl.; Apr. 16 Disco. Resp., Ex. 5 to DeFord Decl. (failing to answer RFA No. 36); Sept. 24 Disco. Resp., Ex. 10 to DeFord Decl. (same); July 15 Disco. Resp., Ex. 9 to DeFord Decl.; Answer [Dkt. # 4]);

- "Respondent's Ninth Affirmative Defense in paragraph 49 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence," thus conceding that Clockwork has standing in this cancellation proceeding, (*see* Petr's RFAs, Ex. 8 to DeFord Decl.; Apr. 16 Disco. Resp., Ex. 5 to DeFord Decl. (failing to answer RFA No. 37); Sept. 24 Disco. Resp., Ex. 10 to DeFord Decl. (same); July 15 Disco. Resp., Ex. 9 to DeFord Decl.; Answer [Dkt. # 4]);

- "Respondent's Tenth Affirmative Defense in paragraph 50 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence," therefore admitting that Clockwork used and is continuing to use the CLOCKWORK Mark, (*see* Petr's RFAs, Ex. 8 to DeFord Decl.; Apr. 16 Disco. Resp., Ex. 5 to DeFord Decl. (failing to answer RFA No. 38); Sept. 24 Disco. Resp., Ex. 10 to DeFord Decl. (same); July 15 Disco. Resp., Ex. 9 to DeFord Decl.; Answer [Dkt. # 4]);

- "Respondent's Eleventh Affirmative Defense in paragraph 51 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by the evidence," thus acknowledging that Barnaby has no other defenses in this case, (*see* Petr's RFAs, Ex. 8 to DeFord Decl.; Apr. 16 Disco. Resp., Ex. 5 to DeFord Decl. (failing to answer RFA No. 39); Sept. 24 Disco. Resp., Ex. 10 to DeFord Decl. (same); July 15 Disco. Resp., Ex. 9 to DeFord Decl.; Answer [Dkt. # 4]);

- "Petitioner's Mark is distinctive," (*see* Petr's RFAs, Ex. 8 to DeFord Decl.; Apr. 16 Disco. Resp., Ex. 5 to DeFord Decl. (failing to answer RFA No. 40); Sept. 24 Disco. Resp., Ex. 10 to DeFord Decl. (same); July 15 Disco. Resp., Ex. 9 to DeFord Decl.);

- "COMFORTCLUB is distinctive as applied to Respondent's services," (*see* Petr's RFAs, Ex. 8 to DeFord Decl.; Apr. 16 Disco. Resp., Ex. 5 to DeFord Decl. (failing to answer RFA No. 41); Sept. 24 Disco. Resp., Ex. 10 to DeFord Decl. (same); July 15 Disco. Resp., Ex. 9 to DeFord Decl.);

- "The COMFORTCLUB mark is distinctive as applied to Petitioner's services," (*see* Petr's RFAs, Ex. 8 to DeFord Decl.; Apr. 16 Disco. Resp., Ex. 5 to DeFord Decl. (failing to answer RFA No. 42); Sept. 24 Disco. Resp., Ex. 10 to DeFord Decl. (same); July 15 Disco. Resp., Ex. 9 to DeFord Decl.);

- "Respondent adopted Respondent's Mark after learning of Petitioner's use of Petitioner's Mark," (*see* Petr's RFAs, Ex. 8 to DeFord Decl.; Apr. 16 Disco. Resp., Ex. 5 to DeFord Decl. (failing to answer RFA No. 43); Sept. 24 Disco. Resp., Ex. 10 to DeFord Decl. (same); July 15 Disco. Resp., Ex. 9 to DeFord Decl.);

- "Respondent's Mark should be cancelled," (*see* Petr's RFAs, Ex. 8 to DeFord Decl.; Apr. 16 Disco. Resp., Ex. 5 to DeFord Decl. (failing to answer RFA No. 44); Sept. 24 Disco. Resp., Ex. 10 to DeFord Decl. (same); July 15 Disco. Resp., Ex. 9 to DeFord Decl.); and

- "This Petition to Cancel should be granted on the basis of a likelihood of confusion and fraud on the Trademark Office," (*see* Petr's RFAs, Ex. 8 to DeFord Decl.; Apr. 16 Disco. Resp., Ex. 5 to DeFord Decl. (failing to answer RFA No. 45); Sept. 24 Disco. Resp., Ex. 10 to DeFord Decl. (same); July 15 Disco. Resp., Ex. 9 to DeFord Decl.).

These admissions therefore conclusively establish that the Barnaby Statements are false; that Barnaby knew, or should have known, that those statements were false at the time it made them; that Clockwork is entitled to judgment as a matter of law on its fraud claim; and that the BARNABY Mark should be cancelled. *See, e.g.*, *Fox Rest.*, 2014 WL 5908011, at *1; *Fram Trak*, 77 U.S.P.Q.2d (BNA) at 2005; Fed. R. Civ. P. 36(a).

Moreover, although the admissions alone are sufficient to mandate cancellation of the Registration, it is worth noting that the facts admitted through the RFAs are consistent with Barnaby's responses to Clockwork's Requests for Production and Interrogatories, as well as the other minimal evidence that Barnaby produced for the record at the close of discovery. To start, the record irrefutably establishes that Clockwork had rights, at a minimum, in the CLOCKWORK Mark within the same geographic area in which Barnaby initially used the BARNABY Mark, and that Clockwork's rights date back to at least as early as 2003, if not 2001, and continue through the present. (*See* Yohn Decl. ¶¶ 5–9; Exs. 1–2 to Yohn Decl.)

Furthermore, it is clear that Barnaby cannot refute Clockwork's affirmative evidence that Barnaby knew, or should have known, of the falsity of the Barnaby Statements at the time it made them. As discussed more fully in Clockwork's motion for sanctions that it has filed simultaneously with this motion for summary judgment, Barnaby's discovery responses are severely deficient. Barnaby completely failed to provide any documents or information (other than self-serving, unverified statements made in response to the First Set of Interrogatories)

relating to its conceptualization and development of the BARNABY Mark or the circumstances around which it first learned of the CLOCKWORK Mark. (*See, e.g.*, Apr. 16 Disco. Resp., Ex. 5 to DeFord Decl.)

When Clockwork pressed Barnaby about its failure to produce, among others, those types of documents and also requested that Barnaby supplement its Interrogatory responses to provide specific details about the Mark's supposed creation, Barnaby responded that "there are no other responsive documents and that everything has been produced." (*See* Ex. 7 to DeFord Decl.) Barnaby also made no effort to provide detail in support of its otherwise evasive Interrogatory responses. (*See id*.)

As a result, prior to the trial phase of this matter, Barnaby has already conceded that it possesses *no* physical evidence to support its unsubstantiated claim that it created the BARNABY Mark out of wholecloth without any knowledge of the virtually identical, preexisting CLOCKWORK Mark that *Barnaby was licensing at the time*, and that was in use by at least seven OHAC franchisees in Barnaby's surrounding area. (Faust Decl. ¶ 3; Yohn Decl. ¶¶ 8–9; Ex. 2 to Yohn Decl.) Barnaby has also confirmed that it cannot provide any specific details about its development of the BARNABY Mark or the circumstances surrounding its first knowledge of the CLOCKWORK Mark. (*See* Apr. 16 Disco. Resp., Ex. 5 to DeFord Decl.; Ex. 7 to DeFord Decl.)

Those concessions are significant standing alone, but are even more telling when viewed in context with the documents Barnaby did produce:

- the August 2007 Nighthawk AirTime Membership Agreement that Barnaby signed, which shows (1) that Barnaby became a member of Clockwork's affiliate, AirTime500, and therefore had access to Clockwork's intellectual property just months before it inexplicably came up with the BARNABY Mark, and (2) that Barnaby expressly acknowledge it possessed no ownership rights in any of the intellectual property to which

it was exposed through its membership in AirTime500, (*see* Nighthawk Agreement, Ex. 2 to DeFord Decl.);

- the Barnaby-Faust Emails, demonstrating that Barnaby *asked its SGI personal coach*, Ms. Faust, for her opinion on an advertisement using the BARNABY Mark less than two weeks before it applied to register that mark, (*see* Ex. B to Faust Decl.);

- a February 29, 2008 invoice, demonstrating that Barnaby's first sale under the BARNABY Mark occurred the very same day that Ms. Faust approved of the advertisement containing the BARNABY Mark, (*see* Ex. 11 to DeFord Decl.; Ex. C to Faust Decl.); and

- documents in response to Clockwork's discovery requests as well as Barnaby's response to Interrogatory No. 5, which establish that – approximately five months before making two of the four Barnaby Statements – Barnaby attended the March 2008 Senior Tech course at which the CLOCKWORK Mark was extensively used, (*see* Ex. 6 to DeFord Decl.; Apr. 16 Disco. Resp., Ex. 5 to DeFord Decl.; Crew Decl. ¶¶ 3–4; Ex. 1 to Crew Decl.).

At a minimum, these documents demonstrate that Barnaby was in close contact with SGI and AirTime both prior to and throughout the entire period in which it allegedly created the BARNABY Mark; that it was exposed to the CLOCKWORK Mark no later than March 2008, and most likely as early as August 2007; and that, by signing the Nighthawk Agreement, it expressly acknowledged that Barnaby did not possess any ownership interest in the intellectual property it obtained access to through its membership in AirTime500. When they are combined with Barnaby's concession that it cannot produce documents evidencing its development of the BARNABY Mark or provide specific details about the development of that mark or the circumstances surrounding its first knowledge of the virtually identical, senior CLOCKWORK Mark, the evidence cancels out any chance of a material fact dispute: Barnaby procured the Registration by committing fraud on the USPTO.

Therefore, for both the reasons that (a) there is no issue of material fact given the evidence produced by Barnaby, and (b) that Barnaby's own discovery answers, including but not limited to Barnaby's failure to answer several pertinent RFAs in this case (which acts as

concessions that Barnaby procured the Registration by committing fraud on the USPTO), the Registration is void ab initio and must be cancelled.

CONCLUSION

For the reasons stated above, Clockwork respectfully requests that the Board grant summary judgment in favor of Clockwork on its fraud claim, and that it cancel Barnaby's registration for COMFORTCLUB, U.S. Reg. No. 3,618,331.

Moreover, due to the fast-approaching pretrial disclosure deadline and start of Petitioner's trial testimony period, Petitioner respectfully requests that the Board stay proceedings pending resolution of this dispositive motion, or alternatively that the Board conduct an expedited review of this motion.

Respectfully submitted,

CLOCKWORK IP, LLC

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(804) 775-7787
(804) 698-2248 (fax)
Attorneys for Petitioner Clockwork IP, LLC

CERTIFICATE OF SERVICE

On May 26, 2015, in addition to being filed and served via ESTTA, this document was sent by first class mail to the following counsel of record:

Julie Celum Garrigue
Celum Law Firm PLLC
11700 Preston Rd
Suite 660 Pmb 560
Dallas, TX 75230

Counsel for Respondent Barnaby Heating & Air

Melissa Replogle
Replogle Law Office LLC
2661 Commons Blvd.
Suite 142
Beavercreek, OH 45431

Counsel for Assignee McAfee Heating & Air Conditioning Co., Inc.

/Amanda L. DeFord/
Amanda L. DeFord

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CLOCKWORK IP, LLC	)	
	)	
Petitioner,	)	
	)	
v.	)	**Cancellation No. 92057941**
	)	**Reg. No. 3,618,331**
BARNABY HEATING & AIR, and McAFEE HEATING AND AIR CONDITIONING CO., INC.	)	
	)	
Respondents.	)	

DECLARATION OF RICK YOHN

I, Rick Yohn, being duly sworn, state:

1. My name is Rick Yohn. I am over the age of 18. I make the statements in this declaration based on my own personal knowledge and the official records of my employer, Clockwork Home Services ("CHS"), related to the facts discussed herein. I certify under oath that the statements made in this declaration are true to the best of my knowledge, information and belief.

2. I am currently employed by CHS, and I am the Vice President of Franchise Operations at CHS, an entity that operates several widely known franchise brands. I have held the position of Vice President of Franchise Operations at CHS since January 2014 and am well aware of the records and materials that existed in the years preceding the date when I assumed that position.

3. One of the franchise businesses that CHS owns and operates through its affiliated entity, One Hour Air Conditioning Franchising LLC, is the popular One Hour Air Conditioning and Heating franchise business ("OHAC").

4. CHS is the sister entity of Petitioner Clockwork IP, LLC ("Clockwork"). Clockwork is also an affiliate of One Hour Air Conditioning Franchising, LLC, which operates the OHAC franchise business.

5. Clockwork is an intellectual property holding company that owns several trademarks, including the COMFORTCLUB trademark, U.S. App. No. 85/880,911 ("COMFORTCLUB Mark").

6. Clockwork licenses use of its trademarks to CHS' franchisees. For example, since at least as early as 2003 (and possibly as early as 2001), Clockwork has licensed the COMFORTCLUB Mark to, among others, OHAC franchisees.

7. Specifically, between 2003 and 2008, Clockwork licensed the COMFORTCLUB Mark to at least 100 OHAC franchisees. Attached hereto as **Exhibit 1** are true and accurate copies of documents showing use of the COMFORTCLUB Mark.

8. Between 2006 and 2008 Clockwork licensed the COMFORTCLUB Mark to up to seven OHAC franchisees located within the state of Texas ("Texas OHAC franchisees").

9. From 2007-2008, Barnaby Heating & Air was located at 4620 Industrial St., Suite C, Rowlett, Texas 75088. I have reviewed records regarding the location of the Texas OHAC franchisees that were using the COMFORTCLUB Mark from 2007 to 2008. Attached hereto as **Exhibit 2** is a true and accurate map showing that Barnaby Heating & Air, represented by the "thumb tack," was located near several of the Texas OHAC franchisees that were using the COMFORTCLUB Mark from 2007 to 2008.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that

all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Executed this 21st day of May 2015 at Sarasota, Florida.

Rich Yohn
Vice President of Franchise Services
Clockwork Home Services

EXHIBIT 1
to the
Yohn Declaration

Join the One Hour...

"Every air conditioner and furnace needs annual service!"
Rebecca Cassel

COMFORTCLUB™

You Benefit 5 ways ...

1. LIFESPAN. Your system can last up to twice as long. It's like getting TWO air conditioners and TWO furnaces for the price of one. The annual service you receive as part of your Comfort Club membership can double the remaining life of your air conditioner and furnace.

2. SAVE $ and SAVE THE EARTH. Your savings on utility bills can easily more than pay for annual service. It's the closest thing to a guaranteed profit investment. "Residential cooling & heating systems are the #1 users of electricity and gas in America. What if everyone used 20% less energy without sacrificing comfort? Shouldn't we do it?" Darren Dixon

3. BREAKDOWN-FREE GUARANTEE. One Hour annual service reduces breakdowns so much, we guarantee that if your furnace or air conditioner needs repairs while you are a Comfort Club member, the next six months membership is FREE.

4. PREMIER CLIENT REWARDS. As a Comfort Club member, you enjoy special privileges. If you ever need service, you immediately go to the front of the line when setting your appointment.

Your low monthly investment is only

$19.95

Per month, per system

RISK FREE... YOU CAN'T LOSE!

5. Inflation protection when you pay in advance:

1 year	$199
2 years	$389
3 years	$579

PLUS! You become part of our Comfort Club Rewards program...

s a One Hour Comfort Club member, you will receive:

, One precision tune-up, professional cleaning, and rejuvenation your air conditioner PLUS, one Safety Check annually (early ring to summer).

, One precision tune-up, professional cleaning, and rejuvenation your furnace PLUS one Safety Check annually (early fall to winter).

When you join the **One Hour COMFORT CLUB**, you become part of our **COMFORT CLUB REWARDS** program!

Dine, shop, travel and save thousands of dollars on products and services you already use every day!

Your **COMFORT CLUB REWARDS** book of coupons is packed with discounts at name brand businesses in your area. You can save up to 50% or get 2-for-1 deals at restaurants, shops, hotels and more!

You'll also receive a complimentary membership card. Simply present your **privately coded card** at restaurants, hotels and more to receive 20% savings.

You'll even find member **online deals with printable coupons** right from your computer for shopping discounts from top retailers.

You'll enjoy unlimited movie ticket discounts, dining coupons, travel discounts and much, much more!

Enjoy it all with our compliments!

Here's just a sample of some of the top brands at your fingertips!

BLOCKBUSTER
MIDAS
AVIS
We try harder.
avis.com
BED BATH & BEYOND
UNIVERSAL Orlando RESORT
Harry and David
TARGET
RadioShack.
Godfather's PIZZA
CINEMARK
The Best Seat in Town
ProFlowers
The Art of Fresher Flowers

ONE HOUR AIR CONDITIONING & HEATING
Always On Time...Or You Don't Pay A Dime!

Club membership card number _____

1-877-655-U•WIN
U•WIN
A Guaranty of Services You Can Take To The Bank!
CERTIFIED & APPROVED

COMFORT CLUB™

As a One Hour Comfort Club member, you will receive:

A. One precision tune-up, professional cleaning, and rejuvenation of your air conditioner PLUS, one Safety Check annually (early spring to summer).

B. One precision tune-up, professional cleaning, and rejuvenation of your furnace PLUS one Safety Check annually (early fall to winter).

BENEFITS

1. LIFESPAN. Your system can last up to twice as long. It's like getting TWO air conditioners and TWO furnaces for the price of one. The annual service you receive as part of your Comfort Club membership can double the remaining life of your air conditioner and furnace.

2. SAVE $ and SAVE THE EARTH. Your savings on utility bills can easily pay for annual service. It's the closest thing to a guaranteed profit investment. "Residential cooling & heating systems are the #1 users of electricity and gas in America. What if everyone used less energy without sacrificing comfort? Shouldn't we do it?" Darren Dixon

3. BREAKDOWN-FREE GUARANTEE. One Hour annual service reduces breakdowns so much, we guarantee that if your furnace or air conditioner needs repairs while you are a Comfort Club member, the next six months membership is FREE. Two visits per year.

4. PREMIER CLIENT REWARDS. As a Comfort Club member, you enjoy special privileges. If you ever need service, you immediately go to the front of the line when setting your appointment.

NAME _____ E-MAIL _____

MAILING ADDRESS _____ LOCATION OF EQUIPMENT _____

_____ _____

PHONE _____ PHONE _____

EQUIPMENT	MAKE	WARRENTY DATE	MODEL NO.	SERIAL NO.

TERMS

OPTION A. **Monthly Investment $** _____ **Automatic Credit Card Debit.** I understand that the monthly fee will continue until a written notice of termination is received at the local office. Allow up to two weeks for termination processing. Method of payment: (Please complete and sign) ☐ Visa ☐ MasterCard ☐ Amex ☐ Discover

Account # ☐☐☐☐ ☐☐☐☐ ☐☐☐☐ ☐☐☐☐ Card Expiration date: mo. _____ yr. _____

Representative _____ Date _____

Client Signature _____ Date _____

OPTION B. **Invest in advance and save:** 1 YEAR _____ 2 YEARS _____ 3 YEARS _____

☐ Visa ☐ Mastercard ☐ Amex ☐ Discover Investment $ _____

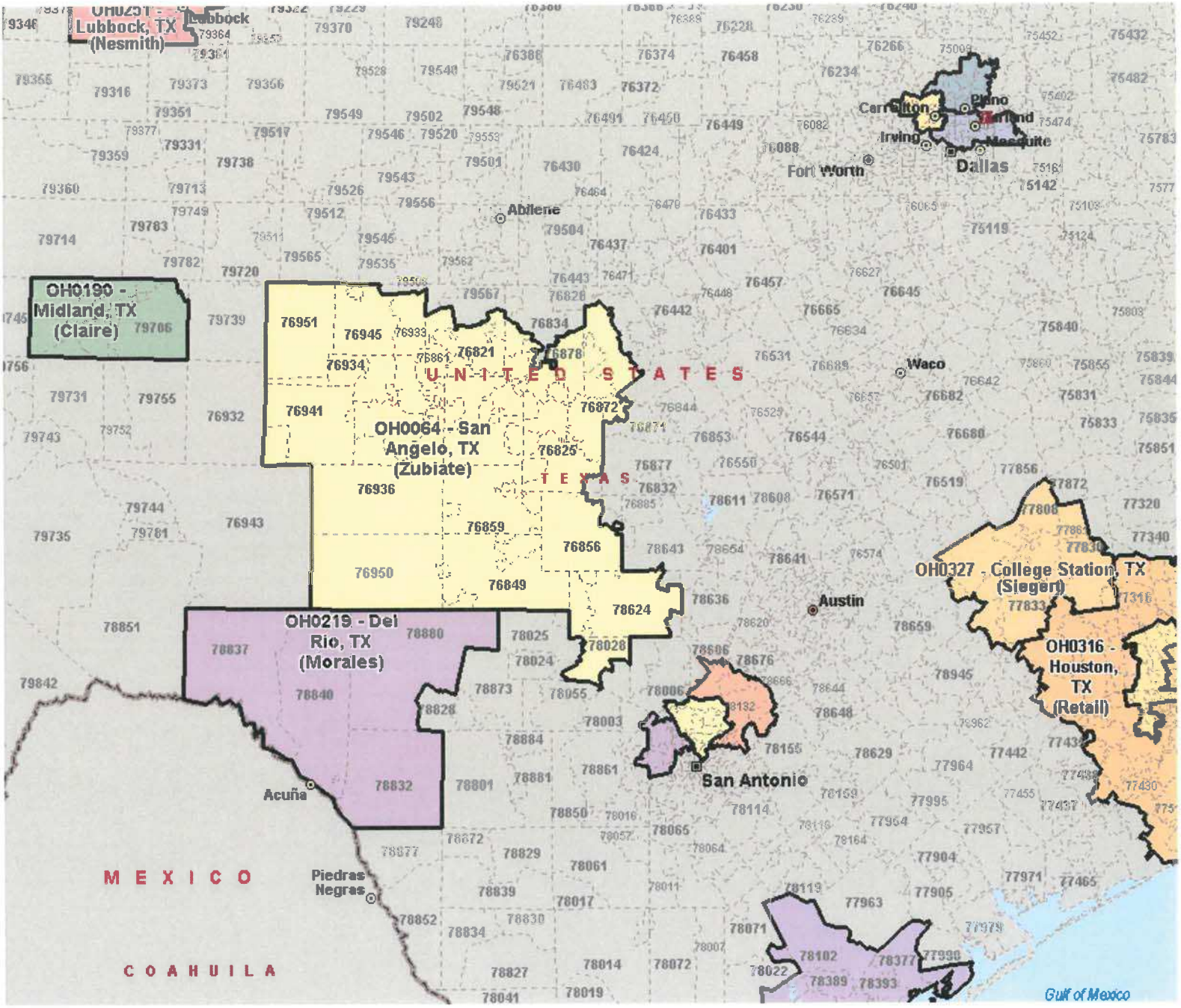
Representative _____ Date _____

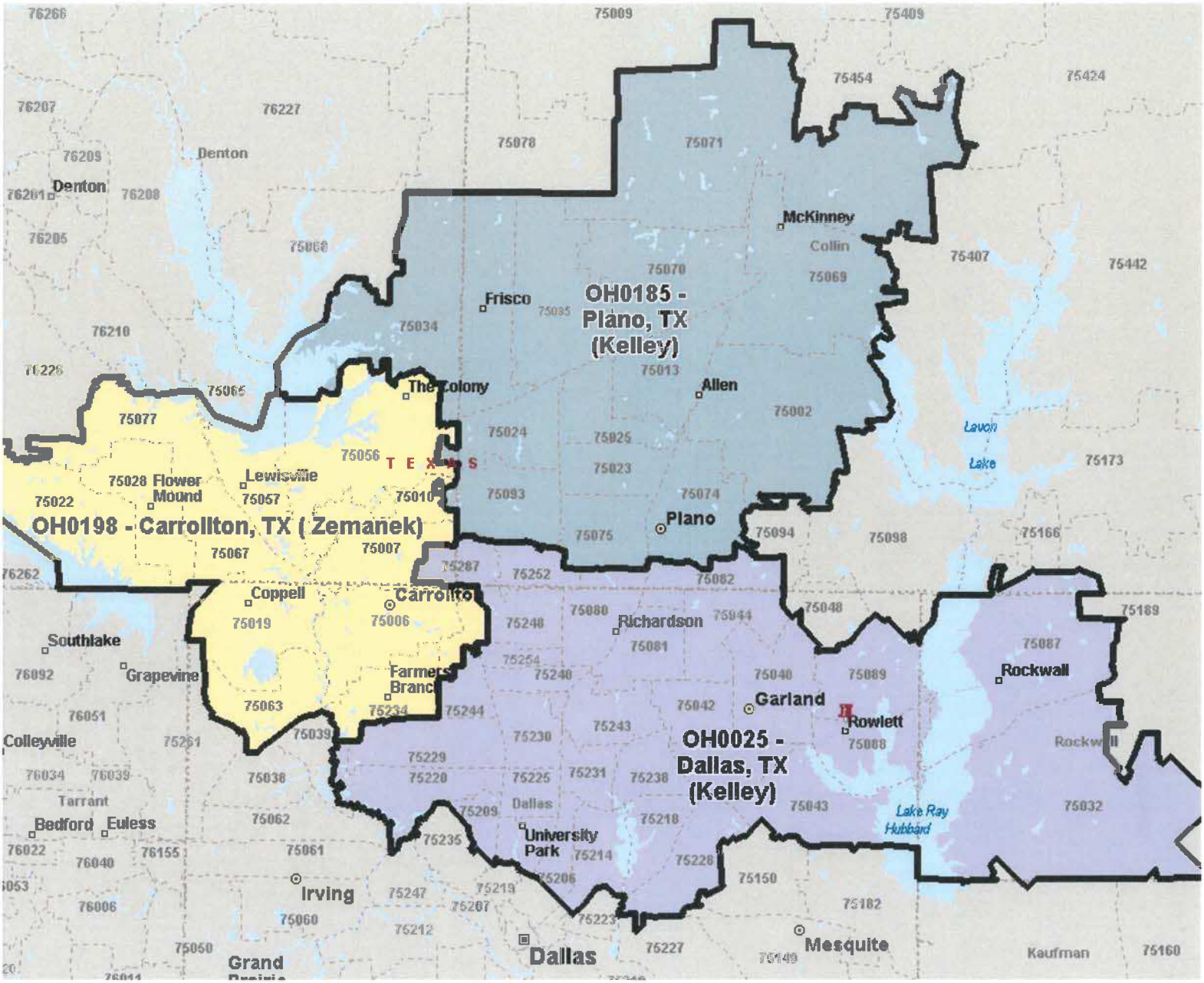
Client Signature _____ Date _____

Risk Free
If you're not satisfied, for any reason, your prior six months membership investment will be refunded.
You Can't Lose

4545 Commercial Way, Unit D, East Anytown, Massachusetts 02333
(508) 555-1212

EXHIBIT 2
to the
Yohn Declaration


OH0251 - Lubbock, TX (Nesmith)
Lubbock
OH0190 - Midland, TX (Claire)
OH0064 - San Angelo, TX (Zubiate)
OH0219 - Del Rio, TX (Morales)
OH0327 - College Station, TX (Sieger)
OH0316 - Houston, TX (Retail)
Abilene
Fort Worth
Dallas
Irving
Carrollton
Plano
Garland
Mesquite
Waco
Austin
San Antonio
Acuña
Piedras Negras
UNITED STATES
TEXAS
MEXICO
COAHUILA
Gulf of Mexico


OH0185 - Plano, TX (Kelley)
OH0198 - Carrollton, TX (Zemanek)
OH0025 - Dallas, TX (Kelley)
Denton
McKinney
Frisco
The Colony
Allen
Plano
Lewisville
Flower Mound
Coppell
Carrollton
Southlake
Grapevine
Farmers Branch
Richardson
Garland
Rowlett
Rockwall
Colleyville
Bedford
Euless
Irving
University Park
Dallas
Mesquite
Kaufman
Grand Prairie
Lake Ray Hubbard
Lavon Lake
Collin
Tarrant
TEXAS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CLOCKWORK IP, LLC	)	
	)	
Petitioner,	)	
	)	
v.	)	**Cancellation No. 92057941**
	)	**Reg. No. 3,618,331**
BARNABY HEATING & AIR, and McAFEE HEATING AND AIR CONDITIONING CO., INC.	)	
	)	
Respondents.	)	

DECLARATION OF ROBIN FAUST

I, Robin Faust, being duly sworn, state:

1. My name is Robin Faust. I am over the age of 18. I make the statements in this declaration based on my own personal knowledge and/or on the investigation made by my employer, Success Group International ("SGI") , into the facts discussed herein. I certify under oath that the statements made in this declaration are true to the best of my knowledge, information and belief.

2. I am currently employed by the Canadian branch of SGI as Client Support Manager. I have held this position with the Canadian branch of SGI since June 2010. Previously, I was employed by the United States branch of SGI as Client Support Representative. I held that position with the United States branch of SGI from March 2004 to May 2010.

3. I am aware that SGI was a sister entity of Clockwork IP Holdings, LLC in 2007 and 2008, and that SGI operates, and operated during all times relevant to the above-captioned case, the affinity membership group, AirTime500. Based on their membership, AirTime500 members have a license to use the trademarks owned by Clockwork IP, LLC, but members are not given ownership over those trademarks or any intellectual property rights in those trademarks.

4. I am aware that Charles Barnaby became a member of AirTime500 in August 2007, and I served as his personal SGI contact from the date his membership began up until I left my employment with the United States branch of SGI.

5. As Mr. Barnaby's personal SGI contact, I would give him advice regarding how to grow his heating and air conditioning business and would also provide feedback with respect to his proposed advertisements.

6. On February 20, 2008, I received an email from Mr. Barnaby in which he forwarded an email sent to him by David Yates, Customer Support Representative, Success Academy. A true and accurate copy of that email, as produced by Barnaby in this case, is attached as **Exhibit A** to this declaration.

7. On February 28, 2008, I received an email from Mr. Barnaby, asking for me to "look over the attached ad" and to "let [Mr. Barnaby] know what" I thought about it. The proposed advertisement incorporated the trademark COMFORTCLUB. A true and accurate copy of that email, as produced by Barnaby in this case, is attached as **Exhibit B** to this declaration.

8. On February 29, 2008, I responded as follows to Mr. Barnaby's February 28, 2008, email: "Peter [Oswald] was reviewing your ad and going to respond directly to you…….in my opinion it is a great looking ad!" Peter Oswald was the Head of Marketing for SGI at the time this email was sent. A true and accurate copy of my February 29, 2008 email to Mr. Barnaby, as produced by Barnaby in this case, is attached as **Exhibit C** to this declaration.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Executed this 13th day of May 2015 at my office in St. Louis, Missouri 63146.

Robin Faust
Client Support Manager
Success Group International, Canadian Division

EXHIBIT A
to
Faust Declaration

From: Charles Barnaby [mailto:rowlettdrifter@verizon.net]
Sent: Wednesday, February 20, 2008 8:46 AM
To: Robin Faust
Subject: FW: Senior Sales Agenda

Hello Robin, I received this from David Yates this morning.

Thanks
Charlie

From: David Yates [mailto:dyates@yoursuccessacademy.com]
Sent: Tuesday, February 19, 2008 3:12 PM
To: charlie@barnabyheatingandair.com
Subject: Senior Sales Agenda

Charlie:

I didn't find an agenda sitting out there, but I went through the presentation PowerPoint and the materials, and I wrote down the main points that are being covered. So, this is my stab at an agenda. I've spoken with Jim about the need to have agendas that we can send to owners and he agrees. In the future, we'll have these more readily available.

For now, I hope this gives you a sense of the training. I don't have a sense of how much time is spent on each of these items. Many of the steps are practiced in the class. so the technicians can work up their own wording for critical components and practice them. Let me know if you need more information.

Agenda:

Introductions/Goal Setting/Rule Setting

Managing the Technician's Time

Dispatching Guidelines

7 Steps to Beginning the Service Visit (preparing for a visit and establishing a relationship with the client)

8 Steps for Using the Straight Forward Pricing Guide

18 Steps for Sales Success (this is a very detailed guide going from diagnostics to helping the clients decide on repair vs. replace)

Objections and How to Handle Them

5 Closing Questions

Key Sales Performance Numbers & Expectations

David Yates
Customer Care Representative
Success Academy
7777 Bonhomme Ave., Suite 1800
Clayton, Missouri 63105
Phone: 800-771-0107 x381
Fax: 314-657-4516
E-mail: dyates@yoursuccessacademy.com

EXHIBIT B
to
Faust Declaration

From: Charles Barnaby [mailto:rowlettdrifter@verizon.net]
Sent: Thursday, February 28, 2008 2:38 PM
To: Robin Faust
Subject: Ad

Hello Robin,

Please look over the attached ad and let me know what you think

Thanks
Charlie

Consumer Alert!

Is Your Home Comfort System Eating You Out of House and Home?

Government mandate for new technology leads to new Home Comfort System with a 99-Year Warranty!*...

This could be the last air conditioner you'll ever buy!

Who would have thought you'd be throwing a retirement party for yourself long before your next Home Comfort System quits?

Well, that's exactly what's likely to happen when you have Barnaby Heating & Air throughout the system and keeping the entire system running smoothly. In the unlikely event that the compressor ever fails in this unit, you'll get a new Condensing Unit for... *FREE!**

Well, that's exactly what's likely to happen when you have Barnaby Heating & Air install a new, energy-efficient Amana® Home Comfort System. Chances are it will even outlast you!

The government recently mandated that air conditioning manufacturers make only high-efficiency air conditioners. What it means to you is that this new, environmentally-friendly, advanced technology saves you hundreds of dollars in energy costs and may even last so long that it could be the last air conditioner you ever buy!

Your old, obsolete air conditioner is costing you money!

These new air conditioners are mandated by law because Uncle Sam has realized that older systems can cost homeowners hundreds of dollars per year in extra, unnecessary energy costs which causes excessive green house gases to be released into the atmosphere. So they have required that manufacturers stop making the **inefficient energy hog units** and produce newer, more energy-efficient systems.

This law may mean that your air conditioning system is obsolete. In fact, your old air unit may be so inefficient that you could possibly pay for replacing your old unit with a new energy efficient Home Comfort System with the savings realized on your future utility bills.

Many manufacturers have had trouble keeping up with the demand for these new air conditioning units. They also cost more to make and as their costs have increased, so have the prices and that's not likely to change anytime soon. The cost of new air conditioners has skyrocketed, in some instances, as much as 300%!

What's your best option?

Faced with this reality, Barnaby Heating & Air has decided to make sure that our customers receive the absolute best value for their money. Please call us and schedule a Comfort Technician to perform a *FREE* Comfort for Life Air Conditioner Analysis, determining whether or not you could benefit now from making the next air conditioner you buy the last air conditioner you'll ever have to buy.

This unique program includes a high-efficiency air conditioner with a 99-Year Warranty on the compressor. The compressor is as important to your air conditioning system as your heart is to your body, pumping vital fluids

And on top of that rock solid guarantee, you will receive a *FREE* Talking Thermostat™. The Talking Thermostat™ is a "smart" stat that automatically adjusts the temperature in your home whether you are there or not, minimizing your energy use, day and night, saving you money. Who doesn't want to maximize their energy savings with energy rates going through the roof?

We've created the "Comfort for Life" Program that guarantees you exactly that... comfort for life.

The "Comfort for Life" Program offers you:

1. The last air conditioner you'll ever need! Get a replacement high-efficiency Home Comfort System with a 99-Year Limited Warranty on the compressor.

2. Big Savings on energy bills! Get a *FREE* Talking Thermostat™ when you have us replace your old, worn-out air conditioner with a new, high-efficiency unit (as described above). This new air conditioning technology obsoletes your old cooling system and drastically reduces energy bills, even more so when working with the Talking Thermostat™.

3. Special financing of as little as $13 per week! As an exclusive company that offers the Royal Privilege Program™, Barnaby Heating & Air has secured a special financing rate for its customers. This special financing plan might even cost less than what you're currently overpaying the utility company due to the inefficiencies of your old, outdated air conditioner!

Make the next air conditioner you buy the last you'll ever have to buy! Call 972.412.0150 today for a Comfort for Life Air Conditioner Analysis! Remember, some manufacturers are having trouble keeping up with demand on these new, technologically-advanced, energy-efficient air conditioners. Get yours now!

BARNABY Heating & Air
TACLA 014319E
4620 Industrial St, Ste C • Rowlett, TX 75088

Ask About the ComfortClub™ Advantage

Call 972.412.0150 now and be cool... for life!

EXHIBIT C
to
Faust Declaration

From: Robin Faust [mailto:rfaust@yoursgi.com]
Sent: Monday, March 03, 2008 8:26 AM
To: 'Charles Barnaby'
Subject: RE: Ad

Charlie
Peter was reviewing your ad and going to respond directly to you.....in my opinion it is a great looking ad!.

robin

From: Charles Barnaby [mailto:rowlettdrifter@verizon.net]
Sent: Thursday, February 28, 2008 2:38 PM
To: Robin Faust
Subject: Ad

Hello Robin,

Please look over the attached ad and let me know what you think

Thanks
Charlie

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CLOCKWORK IP, LLC	)	
	)	
Petitioner,	)	
	)	
v.	)	**Cancellation No. 92057941**
	)	**Reg. No. 3,618,331**
BARNABY HEATING & AIR, and McAFEE HEATING AND AIR CONDITIONING CO., INC.	)	
	)	
Respondents.	)	

DECLARATION OF AMANDA L. DEFORD

I, Amanda L. DeFord, declare and state as follows:

1. I am an associate in the law firm of McGuireWoods LLP, counsel for Petitioner Clockwork IP, LLC ("Clockwork"). I make this declaration in support of Clockwork's Motion for Summary Judgment. The following facts are within my knowledge and, if called and sworn as a witness, I could and would testify competently thereto. The matters referred to in this declaration are based upon my personal knowledge, and/or when referencing documents, such documents were reviewed by me and where applicable, were obtained and compiled at my instruction by others attorneys employed by McGuireWoods LLP, and if called as a witness I could and would testify competently thereto.

2. Clockwork filed U.S. Application No. 85/880,911 on March 20, 2013 for the COMFORTCLUB Mark covering "[p]repaid service plans for heating, ventilating and air conditioning systems" in International Class 36 and "[r]epair, maintenance, and installation services in the field of plumbing, heating, ventilation, and air conditioning" in International Class 37. Attached hereto as **Exhibit 1** is a true and correct copy of status report from the United States Patent and Trademark Office's ("USPTO") Trademark Status & Document Retrieval ("TSDR") website for Clockwork's Application No. 85/880,911.

3. Attached hereto as **Exhibit 2** is a true and accurate copy of the Nighthawk AirTime Membership Agreement that Respondent Barnaby Heating & Air ("Barnaby") produced in response to Clockwork's discovery requests at BARNABY-000197-99.

4. Attached hereto as **Exhibit 3** is a true and accurate copy of Barnaby's application to register the COMFORTCLUB Mark, U.S. Application Serial No. 77/420,784 filed on March 13, 2008, as available on the USPTO's TSDR website.

5. Attached hereto as **Exhibit 4** is a true an accurate copy of Barnaby's August 27, 2008 response to an Office Action issued by an Examining Attorney at the United States Patent and Trademark Office, as available on the USPTO's TSDR website.

6. Attached hereto as **Exhibit 5** are true and accurate copies of Barnaby's April 16, 2015 responses to Clockwork's First Set of Interrogatories, First Set of Request for Production, and First Set of Requests for Admission.

7. Attached hereto as **Exhibit 6** are true and accurate copies of documents Barnaby produced in response to Clockwork's discovery requests at BARNABY-000721-24 and BARNABY-001254-55

8. Attached hereto as **Exhibit 7** is a true and accurate copy of the email I received from Barnaby's counsel, Julie Celum Garrigue, in response to the discovery deficiency letter sent on April 28, 2015.

9. Attached hereto as **Exhibit 8** is a true and accurate copy of the Requests for Admission that Clockwork served on June 4, 2014.

10. Attached hereto as **Exhibit 9** is a true and accurate copy of an excerpt from Barnaby's July 15, 2014 discovery responses. In particular, it is a true and accurate copy of Barnaby's July 15, 2014 responses to Clockwork's Requests for Admission.

11. Attached hereto as **Exhibit 10** is a true and accurate copy of an excerpt from Barnaby's September 24, 2014 discovery responses. In particular, it is a true and accurate copy of Barnaby's July 15, 2014 responses to Clockwork's Requests for Admission.

12. Attached hereto as **Exhibit 11** is a true and accurate copy of the earliest Barnaby Heating & Air invoice relating to the sale of a COMFORTCLUB membership, which Barnaby produced in response to Clockwork's discovery requests at BARNABY-000380.

13. The documents attached to the declaration of Robin Faust as Exhibits A, B, and C are true and accurate copies of the emails Barnaby produced in response to Clockwork's discovery requests at BARNABY-000003–04, BARNABY-000214–15, and BARNABY-001260.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Executed this 26th day of May 2015 at Richmond, Virginia.

A L DeFord

Amanda L. DeFord, esq.
McGuireWoods LLP

EXHIBIT 1
to
DeFord Declaration

United States Patent and Trademark Office
An Agency of the Department of Commerce

Trademark Status and Document Retrieval

Trademark Status & Document Retrieval (TSDR)

SEARCH | MULTI-SEARCH

US Serial No: 85880911 — Status | Documents

Status results found

STATUS | DOCUMENTS — Download — Print Preview

Generated on:	This page was generated by TSDR on 2015-05-13 16:11:50 EDT
Mark:	COMFORTCLUB

COMFORTCLUB

US Serial Number:	85880911	**Application Filing Date:**	Mar. 20, 2013
Register:	Principal		
Mark Type:	Service Mark		
Status:	An Office action suspending further action on the application has been sent (issued) to the applicant. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.		
Status Date:	Dec. 15, 2014		

Mark Information

Expand All

Mark Literal Elements:	COMFORTCLUB
Standard Character Claim:	Yes. The mark consists of standard characters without claim to any particular font style, size, or color.
Mark Drawing Type:	4 - STANDARD CHARACTER MARK

Goods and Services

Note:
The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [..] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For:	Prepaid service plans for heating, ventilating and air conditioning systems		
International Class(es):	036 - Primary Class	**U.S Class(es):**	100, 101, 102
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	2006	**Use in Commerce:**	2006

For:	Repair, maintenance, and installation services in the field of plumbing, heating, ventilation, and air conditioning		
International Class(es):	037 - Primary Class	**U.S Class(es):**	100, 103, 106
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	2006	**Use in Commerce:**	2006

Basis Information (Case Level)

Filed Use:	No	**Currently Use:**	Yes	**Amended Use:**	No
Filed ITU:	Yes	**Currently ITU:**	No	**Amended ITU:**	No
Filed 44D:	No	**Currently 44D:**	No	**Amended 44D:**	No
Filed 44E:	No	**Currently 44E:**	No	**Amended 44E:**	No
Filed 66A:	No	**Currently 66A:**	No		
Filed No Basis:	No	**Currently No Basis:**	No		

Current Owner(s) Information

Owner Name:	Clockwork IP, LLC
Owner Address:	50 Central Avenue Sarasota, FLORIDA 34236

	UNITED STATES		
Legal Entity Type:	CORPORATION	**State or Country Where Organized:**	DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name:	Sean Collin	**Docket Number:**	0229-54001US
Attorney Primary Email Address:	docketing@pelaw.net	**Attorney Email Authorized:**	Yes

Correspondent

Correspondent Name/Address:	SEAN COLLIN IPWATCH CORPORATION 401 E TUSCALOOSA ST FLORENCE, ALABAMA 35630 UNITED STATES

Phone:	2567180078	**Fax:**	2567183139
Correspondent e-mail:	docketing@pelaw.net docketing@pelaw.net	**Correspondent e-mail Authorized:**	Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Dec. 15, 2014	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
Dec. 15, 2014	LETTER OF SUSPENSION E-MAILED	6332
Dec. 15, 2014	SUSPENSION LETTER WRITTEN	82100
Dec. 13, 2014	TEAS/EMAIL CORRESPONDENCE ENTERED	76568
Dec. 13, 2014	CORRESPONDENCE RECEIVED IN LAW OFFICE	76568
Dec. 12, 2014	NOTICE OF REVIVAL - E-MAILED	
Dec. 12, 2014	ASSIGNED TO LIE	76568
Dec. 12, 2014	PETITION GRANTED - RESPONSE RECEIVED	66600
Dec. 08, 2014	ASSIGNED TO PETITION STAFF	66600
Nov. 06, 2014	TEAS DUE DILIGENCE PETITION RECEIVED	1111
Jul. 22, 2014	ABANDONMENT NOTICE MAILED - FAILURE TO RESPOND	
Jul. 22, 2014	ABANDONMENT - FAILURE TO RESPOND OR LATE RESPONSE	
Dec. 20, 2013	NOTICE OF ACCEPTANCE OF AMENDMENT TO ALLEGE USE E-MAILED	
Dec. 19, 2013	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Dec. 19, 2013	NON-FINAL ACTION E-MAILED	6325
Dec. 19, 2013	NON-FINAL ACTION WRITTEN	82100
Dec. 19, 2013	USE AMENDMENT ACCEPTED	82100
Dec. 18, 2013	AMENDMENT TO USE PROCESSING COMPLETE	88889
Dec. 18, 2013	USE AMENDMENT FILED	88889
Dec. 17, 2013	TEAS AMENDMENT OF USE RECEIVED	
Oct. 28, 2013	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
Oct. 28, 2013	LETTER OF SUSPENSION E-MAILED	6332
Oct. 28, 2013	SUSPENSION LETTER WRITTEN	82100
May 21, 2013	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
May 21, 2013	NON-FINAL ACTION E-MAILED	6325
May 21, 2013	NON-FINAL ACTION WRITTEN	82100
May 21, 2013	ASSIGNED TO EXAMINER	82100
Mar. 26, 2013	NOTICE OF PSEUDO MARK E-MAILED	
Mar. 23, 2013	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Mar. 23, 2013	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney:	STEIN, JAMES W	**Law Office Assigned:**	LAW OFFICE 107

File Location

Current Location:	TMEG LAW OFFICE 107 - EXAMINING ATTORNEY ASSIGNED	**Date in Location:**	Dec. 15, 2014

Assignment Abstract Of Title Information - None recorded

Proceedings

Summary

Number of Proceedings: 1

Type of Proceeding: Cancellation

Expand All

Download Adobe Reader

If you are the applicant or the applicant's attorney and have questions about this file, please contact the Trademark Assistance Center

EXHIBIT 2
to
DeFord Declaration

NIGHTHAWK AIRTIME MEMBER AGREEMENT 7247

This AirTime Member Agreement ("Agreement") is entered into as of the date indicated below, by and between AirTime, LLC, a Missouri limited liability company, also known as AirTime 500 ("AirTime," "we," "our," or "us"), and the undersigned business entity and/or individual(s) (jointly and severally referred to as the "member," "your," or "you").

We are in the business of helping heating, ventilation and air conditioning contractors to learn and utilize appropriate methods and techniques of the heating, ventilation and air conditioning contracting business by providing the right to participate as a member in our proprietary program (the "AirTime Program"), which includes but is not limited to having the right to access and use certain information and materials relating to training, advertising, marketing, contracts and forms, operational techniques and methods, and other subjects ("AirTime Resources"). You desire to participate as a member of the AirTime Program and we desire that you participate as a member of the AirTime Program, in accordance with the terms of this Agreement.

AirTime Program. Subject to all of the terms of this Agreement, AirTime grants to you the non-exclusive right and license to participate as a member of the AirTime Program during the term provided for in this Agreement (the "Participation Term"). You agree that you will not use any AirTime Resources outside of your designated geographic service area in addition to abiding by all other terms and conditions regarding use and disclosure of AirTime Resources. A service area is defined as your licenced zip codes listed on attached Schedule C. To be determined by both parties CB

Guarantee. See attached Schedule A

Fees. The attached Schedule B sets forth the membership fees applicable to your participation as a member of the AirTime Program as well as the terms of payment.

Participation Term. The Participation Term commences on the date of this Agreement and will continue until terminated upon thirty (30) days written notice by either party to the other party, or until otherwise terminated as provided in this Agreement.

YOUR SIGNATURE ON BEHALF OF MEMBER INDICATES THAT ALL TERMS OF THIS AGREEMENT, INCLUDING THE ADDITIONAL TERMS ON THE REVERSE SIDE AND ALL SCHEDULES ATTACHED, WHICH ARE HEREBY INCORPORATED BY REFERENCE, HAVE BEEN READ AND ARE AGREED TO BY THE MEMBER.

Dallas, TX

"MEMBER"
Barnaby Heating & Air
Print Full Name of Corporation or Limited Liability Company, if applicable

Signature Of Authorized Officer of Corporation or Limited Liability Company

Authorized Signature Of Owner Of Business

Authorized Signature Of Co-Owner Of Business

Address – P.O. Box for mailing

7510 Pennwood Circle Rowlett, TX 75088
Address – Physical street for shipping (Please check one of the boxes below)
☐ Residential or ☐ Commercial

Phone (Vendor Line):
Phone (Service Line): 972-412-0150
Facsimile: 972-475-6813
Email: barnaby@heatingandair.com
Mobile#: 972-816-2169
Website:

DATE OF AGREEMENT: 8-21-07.

"AirTime"
AirTime, LLC
By
Authorized Signature
Address:
7777 Bonhomme, Suite 1800
St. Louis, Missouri 63105
Attn: Patty Myers
Phone: 877-862-8181
Facsimile: 314-862-2314

(Leave this area blank)

Rev.09/05

(1)

ADDITIONAL TERMS AND CONDITIONS OF THIS AGREEMENT

Termination. In addition to other methods of termination noted in this Agreement, either party may terminate this Agreement and terminate the Participation Term upon five business days' notice following any event of default by the other party. An event of default includes (1) the failure of the member to timely pay any amounts due to AirTime or any of AirTime's affiliates under this Agreement or pursuant to any other agreement or contract between the member and AirTime or any of AirTime's affiliates, (2) the failure by a party to cure the breach of any other obligation of such party under this Agreement or any other agreement between the parties within fifteen days following notice from the other party specifying such breach, or (3) a voluntary or involuntary filing of a bankruptcy petition by or with respect to a party. Following termination of the Participation Term (for any reason and/or by either party), certain terms, conditions and obligations of this Agreement including, without limitation, the confidentiality obligations, indemnification obligations, limitations, payment obligations incurred by you during the Participation Term or by your use of any Yellow Pages Materials, any obligations to be performed upon or following any termination of the Participation Term pursuant to any express provision of this Agreement, and any miscellaneous provisions that are relevant to any such obligations, as set forth in this Agreement, will nevertheless survive and continue in full force and effect.

Money Back Guarantee For New Members

If you, as a new member, wish to cancel your AirTime membership and receive a full refund of the monies that you have already paid to AirTime you must: (a) deliver to the President of AirTime or his designated agent no later than 9:00 PM CST of the third day of the AirTime EXPO all AirTime Resources that had been given to you (whether by mail or in person) and any notes you had taken during the EXPO or based on the AirTime Resources; (b) tell the President or his agent that you wish to cancel your membership; and (c) upon request, sign a termination of membership form. If you timely complete these steps, your AirTime membership will be cancelled, the Down Payment portion of your Initial Membership Fee will be refunded by the same method of payment used for making the Down Payment and you will no longer be obligated to pay the remaining balance of the Initial Membership Fee or to pay the Continuing Membership Fee. The Money Back Guarantee is a one-time offer for new AirTime members only.

Confidentiality & Use Of AirTime Resources.

1. By entering into this Agreement, you agree that you have continuing obligations to AirTime and/or AirTime's affiliates (for purposes of this section only, collectively referred to as "AirTime") in regard to the use and/or disclosure of the AirTime Resources whether the AirTime Resources are in oral, electronic or tangible form. You further agree that AirTime wholly owns and/or has protectable legal rights in and to the AirTime Resources whether (a) the legal protection derives from being confidential, proprietary, or trade secret information of AirTime, (b) the AirTime Resources are subject to copyright, trademark, tradename, and/or patent rights of AirTime, and/or (c) the AirTime Resources are otherwise protected by law or by the terms of this Agreement. You agree that your obligations regarding the AirTime Resources are a continuing one and include any and all AirTime Resources that you currently have access to and/or will or may have access to in the future.
2. You further agree: not to disclose and to keep strictly confidential all AirTime Resources; not to use any or all of the AirTime Resources for any purpose other than your valid participation in the AirTime Program; not to sell, market or disclose any AirTime Resources to any third person, firm, corporation, or association for any purpose; not to make any copies of the AirTime Resources without AirTime's prior written authorization; not to use any AirTime Resources to directly or indirectly compete with AirTime; not to create derivative works from any AirTime Resources (but if you do so with or without first receiving AirTime's permission, you agree that you shall have no rights in any such derivative works and they shall be considered to be solely and exclusively owned by AirTime); and, upon receipt of an oral or written request from AirTime, you shall immediately return all originals and copies (in whatever manner or technology stored, developed or copied) of any and all AirTime Resources.
3. In the event that you have previously entered into an agreement (written or otherwise) requiring you to protect and preserve any or all of the AirTime Resources, such agreement shall continue in full force and effect except to the extent that the terms and conditions of such agreement are contrary to the terms and conditions of this Agreement, in which event the terms and conditions of this Agreement shall govern and the previous agreement shall be deemed to be so amended.
4. If you use any Yellow Pages advertising materials that are included in the AirTime Resources ("Yellow Pages Materials"), you also agree to pay to AirTime the following fees (as noted in Schedule B) regardless of when the Participation Term terminates: (1) any remaining balance of your Initial Membership Fee, and (2) your Continuing Membership Fees for the entire period of time of your Yellow Pages advertising contract(s) that use any Yellow Page Materials. At the expiration of your Yellow Pages advertising contract(s), you agree not to further use for your benefit, or the benefit of any other person or entity, any Yellow Pages Materials.
5. You specifically agree that the remedy at law for any breach of your obligations relating to confidentiality and/or use of the AirTime Resources as indicated in this Agreement may be inadequate and that AirTime, in addition to any other legal or equitable relief available, will be entitled to temporary and permanent injunctive relief without the necessity of proving any actual damages.

Indemnification. We agree to indemnify, hold harmless and defend you, and your directors, officers, employees and agents, from and against any claims, damages, liabilities and reasonable costs (including reasonable attorneys' fees) arising out of any failure by us to fulfill our obligations under this Agreement. You agree to indemnify, hold harmless and defend us, and our members, managers, directors, officers, employees, agents and other representatives, from and against any claims, damages, liabilities and reasonable costs (including reasonable attorneys' fees and other legal costs) arising out of any failure by you to fulfill your obligations under this Agreement or otherwise arising out of the conduct of your business. Neither party will in any event be liable to the other party for any consequential, incidental, indirect or special damages, including, without limitation, damages from loss of profits or business goodwill. If either party to this Agreement breaches any of the terms hereof, that party shall pay to the non-defaulting party upon written demand or as part of a judgment all of the non-defaulting party's costs and expenses, including reasonable attorneys' fees, incurred by that party in enforcing the terms of this Agreement, whether or not litigation is commenced.

AirTime Program and Resources. The precise nature, scope, and format of the AirTime Program and AirTime Resources are subject to change from time to time by AirTime in AirTime's reasonable discretion upon notice to you. While a member in the AirTime Program, you agree to abide by any and all terms and conditions, policies and procedures, and rules and regulations that may be published by AirTime from time to time (whether or not specifically contained in this Agreement or published elsewhere) subject to change by AirTime in AirTime's reasonable discretion upon notice to you.

Other Understandings

1. You reserve the right to conduct your business using your own means, methods, policies and procedures. AirTime is an independent contractor and no partnership, limited liability company, joint venture, or franchise relationship is created between you and AirTime pursuant to this Agreement or otherwise.
2. Without limiting any and all express obligations of each party in this Agreement, you acknowledge and agree that AirTime makes no representations, warranties, or guarantees as to any revenues or other benefits to be derived by you from participation as a member of the AirTime Program or by use of the AirTime Resources.
3. Your license to be a member of the AirTime Program does not entitle you to any interest in or ownership rights to AirTime and you do not have any right or license to use any present or future AirTime Resources in the promotion or conduct of your business except as authorized in this Agreement. Nothing in this Agreement shall be construed as conveying to you (i) any right, title or interests or copyright in or to any AirTime Resources or (ii) any license to use, sell, exploit, copy or further develop any such AirTime Resources.
4. You agree not to issue any press release, or otherwise publicly or privately disclose any information concerning this Agreement, your participation in the AirTime Program and/or the AirTime Resources without our prior written consent.
5. During the Participation Term and for a period of six months thereafter, you (and/or you on behalf of any other person or company) will not, directly or indirectly, solicit for employment or for any other working relationship any employee or employees of AirTime or any of its affiliated companies.
6. During the Participation Term, you must have in force such insurance policies with such coverages and minimum policy limits as may be required by AirTime from time to time upon reasonable notice. In any such policy or policies, AirTime and its affiliates shall be added as additional named insureds and you shall provide, as and when requested, a certificate of insurance confirming the existence of such insurance coverage.

Miscellaneous Provisions.

1. Unless otherwise provided herein, any notice, request, consent or other communication under this Agreement will be effective only if it is in writing and sent by a nationally-recognized overnight delivery service to the address indicated in this Agreement or as otherwise indicated by a party in a notice given by such party to the other party, and will be deemed given or made the next business day after delivery to an overnight delivery service properly addressed.
2. This Agreement embodies the entire agreement of the parties with respect to the subject matters hereof and supersedes all other prior agreements, written or oral, with respect to the subject matters hereof.

3. "Except as otherwise permitted in this Agreement, this Agreement may not be amended or supplemented, unless set forth in a writing signed by each party, and the terms of this Agreement may not be waived unless set forth in a writing signed by the party entitled to the benefits thereof, and no such waiver will be deemed or will constitute a waiver of such provision at any time in the future or of any other provision hereof. The rights and remedies of the parties are cumulative and not alternative. Except as otherwise provided in this Agreement, neither the failure nor any delay by any party in fully exercising any right, power or privilege under this Agreement will operate as a waiver thereof.

4. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or transferred, in whole or in part, by you without the prior written consent of us. We may assign or transfer this Agreement or any rights hereunder to any third party without notice to or the consent of you.

5. The Membership Fees are payable in accordance with Schedule (B) attached hereto. The amount of the Continuing Membership Fee (i) is calculated on an annual or yearly basis but is payable weekly as indicated in Schedule (B) and (ii) is subject to increase after the first year at AirTime's option but in no event will the rate of increase exceed 5% per annual year. Your annual year begins with the date of the first payment of the Membership Fee noted in Schedule (B). Written notice of any increase in the Continuing Membership Fee will be provided 30 days in advance.

6. If any term of this Agreement or application thereof is, in any jurisdiction and to any extent, finally held invalid or unenforceable, such term will only be ineffective as to such jurisdiction, and only to the extent of such invalidity or unenforceability, without invalidating or rendering unenforceable any other terms of this Agreement. This Agreement may be executed in one or more counterparts.

7. This Agreement will be governed by and construed in accordance with the laws of the State of Missouri, without regard to conflict of laws principles. Any action arising out of or relating to this Agreement will be brought by the parties only in a Missouri state court or a federal court sitting within Missouri, which will be the exclusive venue of any such action. Each party waives any objection to the laying of venue of any such action, and irrevocably consents and submits to the jurisdiction of any such designated court (and the appropriate appellate courts) in any such action. Service of process and any other notice in any such action will be effective against such party when transmitted in accordance with the notice requirements set forth above. Nothing contained herein will be deemed to affect the right of a party to serve process in any manner permitted by law.

8. WAIVER OF JURY TRIAL - EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT THAT THEY MAY HAVE TO A TRIAL BY JURY IN ANY ACTION INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT.

EXHIBIT 3
to
DeFord Declaration

PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 12/31/2008)

Trademark/Service Mark Application, Principal Register

Serial Number: 77420784
Filing Date: 03/13/2008

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77420784
MARK INFORMATION	
***MARK**	ComfortClub
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	ComfortClub
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
***OWNER OF MARK**	Barnaby Heating & Air
***STREET**	4620 Industrial ST, STE C
***CITY**	Rowlett
***STATE** **(Required for U.S. applicants)**	Texas
***COUNTRY**	United States
***ZIP/POSTAL CODE** **(Required for U.S. applicants only)**	75088
PHONE	972-412-0150
FAX	972-475-6815
EMAIL ADDRESS	info@barnabyheatingandair.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
TYPE	limited liability company

STATE/COUNTRY WHERE LEGALLY ORGANIZED	Texas
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	036
FIRST USE ANYWHERE DATE	At least as early as 01/22/2008
FIRST USE IN COMMERCE DATE	At least as early as 01/22/2008
***IDENTIFICATION**	Prepaid preventive maintenance service plans for heating, ventilating and air conditioning systems
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/22/2008
FIRST USE IN COMMERCE DATE	At least as early as 01/22/2008
CORRESPONDENCE INFORMATION	
NAME	Barnaby Heating & Air
FIRM NAME	Barnaby Heating & Air
STREET	4620 Industrial ST, STE C
CITY	Rowlett
STATE	Texas
COUNTRY	United States
ZIP/POSTAL CODE	75088
PHONE	972-412-0150
FAX	972-475-6815
EMAIL ADDRESS	info@barnabyheatingandair.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
***TOTAL FEE DUE**	325
***TOTAL FEE PAID**	325
SIGNATURE INFORMATION	
SIGNATURE	/Charles Barnaby/

SIGNATORY'S NAME	Charles Barnaby
SIGNATORY'S POSITION	Principal Partner
DATE SIGNED	03/13/2008

PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 12/31/2008)

Trademark/Service Mark Application, Principal Register

Serial Number: 77420784
Filing Date: 03/13/2008

To the Commissioner for Trademarks:

MARK: ComfortClub (Standard Characters, see mark)
The literal element of the mark consists of ComfortClub.
The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Barnaby Heating & Air, a limited liability company legally organized under the laws of Texas, having an address of
4620 Industrial ST, STE C
Rowlett, Texas 75088
United States
requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

For specific filing basis information for each item, you must view the display within the Input Table.
International Class 036: Prepaid preventive maintenance service plans for heating, ventilating and air conditioning systems

Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class 036, the mark was first used at least as early as 01/22/2008, and first used in commerce at least as early as 01/22/2008, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) direct mail piece.
Specimen File1

Correspondence Information: Barnaby Heating & Air
4620 Industrial ST, STE C
Rowlett, Texas 75088
972-412-0150(phone)
972-475-6815(fax)
info@barnabyheatingandair.com (authorized)

A fee payment in the amount of $325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Charles Barnaby/ Date Signed: 03/13/2008
Signatory's Name: Charles Barnaby
Signatory's Position: Principal Partner

RAM Sale Number: 9157
RAM Accounting Date: 03/13/2008

Serial Number: 77420784
Internet Transmission Date: Thu Mar 13 11:34:48 EDT 2008
TEAS Stamp: USPTO/BAS-71.96.1.66-20080313113448282933-77420784-40030574bb9cde1113f4fe217ddaca3212f-CC-9157-20080313113219201855

ComfortClub


No Image Attached

EXHIBIT 4
to
DeFord Declaration

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 04/2009)

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77420784
LAW OFFICE ASSIGNED	LAW OFFICE 106
MARK SECTION (no change)	
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	036
DESCRIPTION	
Prepaid preventive maintenance service plans for heating, ventilating and air conditioning systems	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/22/2008
FIRST USE IN COMMERCE DATE	At least as early as 01/22/2008
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	036
DESCRIPTION	
Prepaid preventive maintenance service plans for heating, ventilating and air conditioning systems	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/22/2008
FIRST USE IN COMMERCE DATE	At least as early as 01/22/2008
STATEMENT TYPE	"The substitute specimen(s) was in use in commerce as of the filing date of the application."
SPECIMEN FILE NAME(S)	
ORIGINAL PDF FILE	SPU0-719611226-125249687_._08-DH-0001_back_copy.pdf
CONVERTED PDF FILE(S)	\\TICRS\EXPORT3\IMAGEOUT3\774\207\77420784\xml1\ROA0002.JPG

(1 page)	
ORIGINAL PDF FILE	SPU0-719611226-125249687_._08-PC-0001_frnt_copy.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT3\IMAGEOUT3\774\207\77420784\xml1\ROA0003.JPG
SPECIMEN DESCRIPTION	Digital file of door hanger and postcard use in the first stages of ad campaign.
SIGNATURE SECTION	
DECLARATION SIGNATURE	/charles barnaby/
SIGNATORY'S NAME	charles barnaby
SIGNATORY'S POSITION	owner
DATE SIGNED	08/27/2008
RESPONSE SIGNATURE	/charles barnaby/
SIGNATORY'S NAME	charles barnaby
SIGNATORY'S POSITION	owner
DATE SIGNED	08/27/2008
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Aug 27 13:35:00 EDT 2008
TEAS STAMP	USPTO/ROA-71.96.11.226-20 080827133500670827-774207 84-430e29d70afb075634f3fd 123e95ec5998-N/A-N/A-2008 0827125249687146

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 04/2009)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **77420784** has been amended as follows:

CLASSIFICATION AND LISTING OF GOODS/SERVICES
Applicant proposes to amend the following class of goods/services in the application:

Current: Class 036 for Prepaid preventive maintenance service plans for heating, ventilating and air conditioning systems
Original Filing Basis:
Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 01/22/2008 and first used in commerce at least as early as 01/22/2008, and is now in use in such commerce.

Proposed: Class 036 for Prepaid preventive maintenance service plans for heating, ventilating and air conditioning systems
Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 01/22/2008 and first used in commerce at least as early as 01/22/2008, and is now in use in such commerce.
Applicant hereby submits a new specimen for Class 036. The specimen(s) submitted consists of Digital file of door hanger and postcard use in the first stages of ad campaign..
For an application based on 1(a), Use in Commerce, "The substitute specimen(s) was in use in commerce as of the filing date of the application."
Original PDF file:
SPU0-719611226-125249687_._08-DH-0001_back_copy.pdf
Converted PDF file(s) (1 page)
Specimen File1
Original PDF file:
SPU0-719611226-125249687_._08-PC-0001_frnt_copy.pdf
Converted PDF file(s) (1 page)
Specimen File1

SIGNATURE(S)
Declaration Signature
If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii). If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods or services listed in the application as of the application filing date. 37 C.F.R. Secs. 2.34(a)(1)(i). The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to

be true.

Signature: /charles barnaby/ Date: 08/27/2008
Signatory's Name: charles barnaby
Signatory's Position: owner

Response Signature
Signature: /charles barnaby/ Date: 08/27/2008
Signatory's Name: charles barnaby
Signatory's Position: owner

The signatory has confirmed that he/she is not represented by either an authorized attorney or Canadian attorney/agent, and that he/she is either (1) the applicant or (2) a person(s) with legal authority to bind the applicant; and if an authorized U.S. attorney or Canadian attorney/agent previously represented him/her in this matter, either he/she has filed a signed revocation of power of attorney with the USPTO or the USPTO has granted the request of his/her prior representative to withdraw.

Serial Number: 77420784
Internet Transmission Date: Wed Aug 27 13:35:00 EDT 2008
TEAS Stamp: USPTO/ROA-71.96.11.226-20080827133500670
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5ec5998-N/A-N/A-20080827125249687146

Introductory Offer!!!

NEW!...

ComfortClub™ Memberships

Platinum Membership - $29.95 per month*

Guaranteed same-day appointments
FREE service on system rejuvenation twice per year
FREE repairs up to Level 5
FREE diagnostic service, and...
100% of your unused balance may be applied to a new home comfort system.

Gold Membership - $19.95 per month*

Guaranteed appointments within 24 hours
20% off major services
FREE Level 1 repairs... no exclusions
FREE system rejuvenation twice per year,
FREE diagnostic service, and...
100% of your unused balance may be applied to a new heating or cooling system.

Silver Membership - $11.95 per month

Guaranteed appointments within 48 hours
10% off all repair services,
FREE system rejuvenation twice per year (filters extra)
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Make your best choice for: Savings, response, reliability, care and safety.

SERVICE, not selling. These plans offer the BEST and most AFFORDABLE options to avoid costly repair, replacement, loss of comfort, inconvenience or loss of safety. These plans are like SMOKE ALARMS, helping to prevent major problems or putting the fire out before it becomes a catastrophe.

Call today for more information on New! ComfortClub™ Memberships!

All Systems must pass an initial Diagnostics Check and deemed in proper working order. *Covers repairs listed in the FixedRight Pricing™ guide. Free repairs up to Level 5 for Platinum or Level 1 for Gold.

BARNABY Heating & Air

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10% Off* Any Service

Present this card and save 10% on your next service.

Call Today!

972.412.0150

*One time offer not valid in conjunction with other offers.

BARNABY Heating & Air

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Introducing Our NEW!...

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SERVICE, not selling. These plans offer the BEST and most AFFORDABLE options to avoid costly repair, replacement, loss of comfort, inconvenience or loss of safety. These plans are like SMOKE ALARMS, helping to prevent major problems or putting the fire out before it becomes a catastrophe.

Call TODAY to learn how you could save up to $890 on your next comfort system failure.

All Systems must pass an initial Diagnostics Check and deemed in proper working order. *Covers repairs listed in the FixedRight Pricing™ guide.
Free repairs up to Level 5 for Platinum or Level 1 for Gold.

Heating & Air Conditioning
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Platinum Membership - $29.95 per month*
Guaranteed same-day appointments
FREE service on system rejuvenation twice per year
FREE repairs up to Level 5
FREE diagnostic service, and...
100% of your unused balance may be applied to a new home comfort system.

Gold Membership - $19.95 per month*
Guaranteed appointments within 24 hours
20% off major services
FREE! Level 1 repairs... no exclusions
FREE! system rejuvenation twice per year,
FREE! diagnostic service, and...
100% of your unused balance may be applied to a new home comfort system.

Silver Membership - $11.95 per month
Guaranteed appointments within 48 hours
10% off all repair services,
FREE! system rejuvenation twice per year (filters extra)
$29.95 diagnostic service.

EXHIBIT 5
to
DeFord Declaration

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration No. 3,618,331

Registration Date: May 12, 2009

Mark: COMFORTCLUB

Clockwork IP, LLC	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No. 92057941
	)	
BARNABY HEATING & AIR, LLC	)	
	)	
Respondent.	)	

RESPONDENT'S SECOND AMENDED OBJECTIONS AND RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES, FIRST REQUESTS FOR PRODUCTION, AND FIRST REQUESTS FOR ADMISSION

TO: PETITIONER CLOCKWORK IP, LLC AND ITS COUNSEL OF RECORD:

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and TBMP § 403, et seq., Respondent Barnaby Heating & Air, LLC ("Barnaby") serves its SECOND Amended Objections and Answers to Petitioner's First Set of Interrogatories, Petitioner's First Requests for Production of Documents and Petitioner's First Requests for Admission.

Respondent, in answering these interrogatories, requests for production, and requests for admission will afford the words contained therein their common, ordinary meaning, except as the Federal Rules of Civil Procedure may specifically define them. Respondent answers these interrogatories, requests for production, and requests for admission in accordance with the Federal Rules of Civil Procedure, the TBMP and the Trademark Trial and Appeal Board applicable rules.

The pleadings in this matter do not indicate how the following entities are related to this litigation: "Clockwork "SGI"", "AirTime", "AirTime 500", "Success Day", "Success Academy", "CONGRESS", "SGI EXPO", "BRAND DOMINANCE", and "Senior Tech." These entities are not parties to this cancellation proceeding and without more information about each of these entities, or how they are related to Petitioner, Clockwork IP, LLC. Until Petitioner amends its pleadings in this case, or better provides an explanation of how any of the above entities relate to Petitioner, Respondent is unable to provide accurate responses to Petitioner's discovery requests about these various entities.

INTERROGATORIES

INTERROGATORY NO. 1:

Describe in detail how Respondent's Mark was first conceived of by Respondent.

ANSWER:

Mr. Charlie Barnaby is the President of Barnaby Heating & Air, LLC located in Rowlett, Texas. Mr. Charlie Barnaby and his nephew, Shelby Cuellar, relying on their combined years of experience in the air conditioning and heating trade, and their ingenuity, conceived of, created, and developed the COMFORTCLUB mark as a means of marketing club membership sales to its existing customers and to new customers throughout Rowlett, Texas and the Dallas-Fort Worth area. Mr. Barnaby and Mr. Cuellar conceived of and developed the COMFORTCLUB while working at Barnaby Heating & Air in Rowlett, Texas beginning sometime in the Fall and Winter of 2007. Following the conception and development of the COMFORTCLUB mark, and in an effort to market COMFORTCLUB club membership sales to its existing customers and to new customers throughout Rowlett, Texas and the Dallas-Fort Worth area, on January 28, 2008, Barnaby Heating & Air ordered five thousand (5,000) 3.5 X 8.5 double sided Rip Hangers from 48HourPrint.com of Quincy, Massachusetts that incorporated and displayed Respondent's COMFORTCLUB mark.

Neither Mr. Charlie Barnaby, nor Mr. Cuellar, relied upon any documents or materials of Petitioner's while creating and developing Respondent's COMFORTCLUB mark.

INTERROGATORY NO. 2:

State in detail the reasons for Respondent's selection of COMFORTCLUB and the filing of U.S. Registration No. 3,618,331 therefore, the date that Respondent's Mark was selected and cleared, and identify all persons involved in the selection and clearance of Respondent's Mark.

ANSWER:

Given the amount of time that has lapsed between Respondent's selection of COMFORTCLUB and the filing of U.S. Registration No. 3,618,331, Respondent relies on the written materials and the United States federal trademark application databases and records that exist on the website, www.uspto.gov in answering this interrogatory. Respondent is unable to know, without guessing, which individuals at the United States Patent and Trademark Office were involved in the "clearance of the [COMFORTCLUB] mark." Respondent, Barnaby Heating & Air, LLC, developed the COMFORTCLUB trademark in the Fall and Winter of 2007 and Respondent has been using the COMFORTCLUB mark in commerce continuously since at least as early as January 2008.

Respondent incorporates its response to Interrogatory No. 1 above, as if fully set forth herein. Respondent's President Mr. Charlie Barnaby along with Shelby Cuellar selected the COMFORTCLUB mark and following a search online and a search of the United States and Patent and Trademark Office archives filed for federal trademark protection. Respondent selected and conducted multiple online searches to confirm that no other companies offering air conditioning and heating services were using the COMFORTCLUB mark in commerce. Respondent filed the United States federal trademark application on without the aid of anyone outside of Respondent's company, or an attorney, or agent at the U.S. Trademark Office.

INTERROGATORY NO. 3:

State Respondent's annual expenditures in developing and marketing COMFORTCLUB.

ANSWER:

Respondent would have to speculate or guess about the amount of money spent developing and marketing COMFORTCLUB on an annual basis. Respondent has produced receipts for the Rip Hangers purchased in January 28, 2008 after months of development of the COMFORTCLUB mark that began in the Fall or Winter of 2007. Respondent has also produced an invoice for carbonless COMFORTCLUB business forms. Respondent relies upon those documents in response to this Interrogatory.

Respondent maintains the website, www.barnabyheatandair.com, on which Respondent markets COMFORTCLUB mark and COMFORTCLUB memberships. Respondent expends approximately $3,700 annually as a member of the Better Business Bureau through which Respondent advertises the

COMFORTCLUB mark. Respondent expended money employing Mr. Shelby Cuellar during the Fall and Winter of 2007 and in the Winter and Spring of 2008 paying Mr. Cuellar an income while Mr. Cuellar and Mr. Barnaby developed the COMFORTCLUB mark. Respondent employed Mr. Cuellar and paid Mr. Cuellar an income when Respondent began its initial marketing campaign and use of the COMFORTCLUB mark in commerce in 2008.

Respondent has used the COMFORTCLUB Mark continuously since at least as early as January 2008, and Respondent did not independently account for or apportion those amounts it spent developing and marketing the COMFORTCLUB Mark on an annual basis from late 2007 through today.

Respondent incurred filing and registration fees for securing the federal trademark for Respondent's COMFORTCLUB mark. Respondent estimates that it spent approximately $10,000 on January 18, 2008 – January 25, 2008 for its initial COMFORTCLUB marketing campaign, including the purchase of 5,000 Rip Hangers, forms, strategic marketing campaigns, and for the purchase of additional printed marketing materials. Respondent also incorporated the COMFORTCLUB mark onto its existing website. Respondent estimates that it has spent approximately $200,000 in developing and marketing the COMFORTCLUB Mark from the Fall or Winter of 2007 through today's date.

INTERROGATORY NO. 4: Describe all documents supporting or negating Respondent's priority and ownership of COMFORTCLUB.

ANSWER: Respondent "describes" the following documents: (1) All documents produced herewith, including but not limited to Respondent's business records, the August 21, 2007, NIGHTHAWK AIRTIME MEMBER AGREEMENT, entered into between AirTime, LLC and Respondent, an undated Confidentiality Agreement entered into by Respondent and Clockwork Home Services, Inc. formerly known as Venvest, Inc., invoices and forms indicating the dates that Respondent began marketing and advertising its COMFORTCLUB mark, emails to and from individuals at Success Academy beginning in February 2008, Respondent's credit card statements indicating the dates and amounts Respondent paid to AirTime, LLC as a member of AirTime 500 and for developing, registering, and marketing the COMFORTCLUB mark, registration materials for an AirTime 500 March 11-15, 2008 AirTime 500 EXPO, course materials from a "SGI" "The Senior Sales Technician" course attended by Respondent's Charlie Barnaby in March 17-19, 2008, and any and all documents relating to the formation of Petitioner as a limited liability company formed in the State of Delaware, any and all documents Respondent received from Success Academy as a

member of AirTime 500, any and all documents that contain images from Respondent's website, any and all documents showing the corporate formation and/or dissolution and/or merger of AirTime, LLC and any and all companies that may have merged with AirTime, LLC, any and all documents indicating the dates Clockwork Home Services, Inc. was formed and the date of the forfeiture of its incorporation, any and all corporate formation records, fictitious names certificates, annual reports, change in registered agents, and any other corporate or company filings made by Success Group International, New Millennium Academy, LLC, AirTime, LLC, Clockwork Home Services, Inc., Clockwork IP, LLC, The New Masters Alliance, LLC, DirectEnergy, Inc., Aquila Investments, CW 2012, LLC, Plumbers Success, LLC, Roofers Success, LLC, Clockwork, Inc., and Barnaby Heating & Air, LLC. Respondent will also rely on all assignments on filed by or on behalf of Petitioner with the USPTO. Respondent will rely on all assignments to and from Aquila Investments, Inc.

Respondent will also generally rely on any and all documents that relate in any way to Petitioner's alleged claims and Respondent's defenses, including the sworn pleadings and the sworn answer of the parties, those documents that Petitioner and Respondent will include on their exhibit lists, any and all documents identified by Petitioner or Respondent in Rule 26(A)(1) Disclosures, any and all documents on file with the U.S. Patent & Trademark Office, and the Trademark Trial and Appeal Board. Respondent will rely on documents acquired from Petitioner's former or current counsel and or agents, documents located in Respondent's business materials and documents Petitioner served upon other parties – not yet a party to this action. Respondent will rely on Petitioner's application to the U.S. Trademark Office, Application No. 85/880911, filed March 20, 2013 based upon "intent to use".

Respondent has no firsthand knowledge about the document, Bates Numbered OHAC-OTT-001, produced by Petitioner in this cancellation proceeding, which purports to show a nearly identical mark, "COMFORT CLUB", being used in the "*Dynamic Training*" "SUCCESS ACADEMY" "THE ON-TIME TECHNICIAN" "ONE HOUR HEATING & AIR CONDITIONING™" "Always on Time…Or You Don't Pay a Dime! ®" Organization. Respondent had never seen the document, Bates Numbered OHAC-OTT-001, entitled "*Dynamic Training*" "SUCCESS ACADEMY" "THE ON-TIME TECHNICIAN" "ONE HOUR HEATING & AIR CONDITIONING™" "Always on Time…Or You Don't Pay a Dime! ®" until this document was produced by Petitioner just prior to the initiation of this cancellation proceeding. Petitioner does not own franchises. Respondent was never a franchisee of Petitioner's. Respondent was never a member of any organization belonging to Petitioner. Because Respondent was never a member of any organization related to "*Dynamic Training*" "SUCCESS ACADEMY" "THE ON-TIME TECHNICIAN" "ONE HOUR HEATING

& AIR CONDITIONING™" "Always on Time…Or You Don't Pay a Dime! ®", Respondent never attended a "*Dynamic Training*" "SUCCESS ACADEMY" "THE ON-TIME TECHNICIAN" "ONE HOUR HEATING & AIR CONDITIONING™" "Always on Time…Or You Don't Pay a Dime! ®" course.

Respondent never entered into a contract with Petitioner. Respondent, Barnaby Heating & Air, LLC, is a Texas Limited Liability Company. On August 21, 2007, Respondent entered into a contract titled NIGHTHAWK AIRTIME MEMBER AGREEMENT with AirTime, LLC, a Missouri Limited Liability Company and Respondent became a "member" of an organization known as "AirTime 500". Respondent has no personal knowledge about the relationship between Petitioner and AirTime, LLC or Petitioner and the AirTime 500 organization.

From a review of documents produced by Petitioner just prior to the initiation of this cancellation proceeding, Respondent believes that an entity known as "SGI" and/or "Success Academy" may provide training and educational programs for multiple organizations, including the "AirTime 500" organization to which Respondent belonged beginning in August 2007. Respondent was never a member of any other organization owned by, managed by, or in any way related to Petitioner. Clockwork Home Services, Inc. owned "ONE HOUR HEATING & AIR CONDITIONING™" franchises. Respondent does not nor has it ever owned a "ONE HOUR HEATING & AIR CONDITIONING™" franchise. As a result of never having owned a "ONE HOUR HEATING & AIR CONDITIONING™" franchise, Respondent never saw, nor was Respondent ever provided, a copy of the document, Bates Numbered OHAC-OTT-001, entitled, "*Dynamic Training*", "SUCCESS ACADEMY", "THE ON-TIME TECHNICIAN", "ONE HOUR HEATING & AIR CONDITIONING™" "Always on Time…Or You Don't Pay a Dime! ®". Respondent was never provided a copy of the document, Bates Numbered OHAC-OTT-001, entitled, "*Dynamic Training*", "SUCCESS ACADEMY", "THE ON-TIME TECHNICIAN", "ONE HOUR HEATING & AIR CONDITIONING™" "Always on Time…Or You Don't Pay a Dime! ®" until Petitioner disclosed this document to Respondent in this litigation.

Pursuant to Rule 26(a)(1)(B) of the Federal Rules of Civil Procedure, Barnaby provides the following description of categories of documents, electronically stored information, and tangible things that Barnaby has in its possession, custody, or control and may use to support its claims or defenses. Unless otherwise noted, the documents described above and the following documents, electronically stored information, and tangible things have been produced herewith:

a. Documents pertaining to the historical use, sales and advertising of Barnaby's services and Barnaby's COMFORTCLUB mark.

b. Advertisements and other documents pertaining to the continuous use of the "COMFORTCLUB" mark by Barnaby, from a date prior to the date of first use alleged by Clockwork in documents produced in this case and in documents filed with the U. S. Patent and Trademark Office, Application No. 85/880911 – COMFORTCLUB – by Petitioner.

c. Internet printouts from Barnaby's website at www.barnabyheatingandair.com.

d. Documents pertaining to the subscription, development and history of the website www.barnabyheatingandair.com.

e. Documents pertaining to the subscription, development and history of the website www.onehourheatandair.com.

f. Documents and franchise materials from the One Hour Heating & Air.

g. Internet printouts from DirectEnergy. Internet printouts from One Hour Heating & Air.

Barnaby expressly reserves the right to supplement this response.

INTERROGATORY NO. 5:

List and describe all Petitioner, SGI, or AirTime events, including without limitation, Success Day and Success Academy sessions, CONGRESS franchise events, SGI EXPO events, BRAND DOMINANCE events, Senior Tech events, and any similar events attended by Respondent since 2006.

ANSWER:

Respondent has not attended any events held by Petitioner. Respondent is unaware of any "SGI" events. Respondent has never attended a "CONGRESS franchise event." Respondent has never attended a "BRAND DOMINANCE" event. Respondent is a former member of "AirTime 500" and only attended AirTime 500 events. Respondent attended a "SGI AirTime 500 EXPO" in September 2007. Respondent believes that while he was present at the September 2007 "SGI AirTime 500 Expo" he may have attended a "Success Day" sales and marketing meeting. Respondent attended a "SGI AirTime 500 EXPO" in approximately March 10-15, 2008 and attended a "Success Academy" "The Senior Sales Technician" meeting from March 2008. The March 2008 "Success Academy" "The Senior Sales Technician" was the only training event Respondent ever attended. Respondent attended other AirTime 500 Expos periodically from 2009 through 2012. Respondent is no longer an AirTime 500 member.

INTERROGATORY NO.·6:

Describe Respondent's relationship with Petitioner, SGI, and AirTime 500.

ANSWER: Respondent has no relationship with Petitioner. Respondent has no relationship with SGI. Respondent has no relationship with AirTime 500.

INTERROGATORY NO. 7:

Describe and list all agreements between Respondent and Petitioner, Respondent and SGI, Respondent and AirTime 500, including without limitation all Acknowledgements of Non-Solicitation Policy or Confidentiality Agreements executed by Respondent.

ANSWER: Respondent has no agreements with Petitioner. Respondent has no agreements with SGI. Respondent has no agreements with AirTime 500. Respondent is a former member of AirTime 500 and on August 21, 2007 entered into a contract with AirTime, LLC. Respondent refers Petitioner to the August 21, 2007 contract between Respondent and AirTime, LLC produced herewith. Respondent has never signed any agreements with Petitioner. Respondent is not a licensee of Petitioner.

INTERROGATORY NO. 8:

Describe all goods and services with which Respondent's Mark has been, is intended to be, or is currently used and, for each good or service identified:

(a) state the date of first use anywhere and the date of first use in commerce and the nature of that first use in commerce;

(b) describe any periods of non-use;

(c) describe the distribution system for each such good or service including the channels of trade in which such good or service is or will be distributed;

(d) describe the methods by which Respondent has advertised or promoted the sale of each good or service, including, without limitation, the types of media in which such advertising and promotion has been conducted;

(e) identify and describe the geographic scope of any advertising and sales for each good or service provided;

(f) identify all instances of use of Respondent's Mark by Respondent or Respondent's licensees, including use in marketing materials, internal materials, and Respondent's websites.

ANSWER:

Respondent has used the COMFORTCLUB mark continuously since, at least as early as January 22, 2008 in its promotional materials and its marketing materials. Respondent relies on the materials produced herewith describing Respondent's goods and services for which Respondent's Mark has been and is currently used. Respondent incorporates its response to Interrogatories Nos. 1, 2, 3, and 4, and the documents produced herewith.

INTERROGATORY NO. 9:

Describe all facts and identify all documents and things relating to and showing Respondent's use of Respondent's Mark in commerce before and after Mr. Charles Barnaby's execution of the Success Academy "Acknowledgement of Non-Solicitation Policy" dated March 17, 2008.

ANSWER:

See Respondent's answer to Interrogatory Nos. 1-4 and No. 8, which answer is fully incorporated herein.

INTERROGATORY NO. 10:

Identify and describe the types of customers to whom Respondent has provided or is providing COMFORT CLUB services and, for each type of customer:

(a) indicate the approximate fractional or percentage dollar volume of sales to each type of customer; and

(b) state the method by which Respondent has provided or is providing services identified with Respondent' s Mark, including without limitation, channels of trade utilized or being utilized by Respondent.

ANSWER:

Respondent incorporates its response to Interrogatories Nos. 1, 2, 3, and 4 and to Interrogatory No. 8, and the documents produced herewith.

INTERROGATORY NO. 11:

State the annual revenues generated in connection with Respondent's services offered under Respondent's Mark from the date of first use to present.

ANSWER:

Respondent incorporates its response to Interrogatories Nos. 1, 2, 3, and 4 and to Interrogatory No. 8, and Respondent relies on the COMFORTCLUB club membership sales materials produced herewith. Respondent reserves the right to supplement this response.

INTERROGATORY NO. 12:

State whether any search, inquiry, investigation, or marketing survey has been or is being conducted relating to the availability, registrability, or enforceability of Respondent's Mark and, if so, for each identify all documents relating to the search or investigation including, but not limited to, each report referring to or reflecting the search or investigation.

ANSWER:

Respondent performed a thorough search, inquiry, investigation, and marketing survey prior to expending advertising dollars and securing a federal trademark registration for the COMFORTCLUB mark. Respondent does not have a printed report of each effort it made prior to filing its federal trademark application. Respondent refers Petitioner to the documents produced herewith relating to the registration of Respondent's COMFORTCLUB mark.

INTERROGATORY NO. 13:

Describe in detail all instances in which Respondent has received objections or misdirected inquiries regarding its use and/or application for Respondent's Mark.

ANSWER:

Respondent does not understand the request as drafted. Respondent is unsure what Petitioner means by "instances in which Respondent has received objections or misdirected inquiries regarding its use and/or application for Respondent's Mark." Subject to the foregoing and without waiving same, Respondent is only aware of the objections made by Clockwork Home Services, Inc. and now Clockwork IP, LLC regarding Respondent's use of Respondent's COMFORTCLUB Mark. Respondent also received an "objection" to the use of Respondent's use of the COMFORTCLUB mark from McAfee Heating & Air Conditioning, Inc. at some time in 2013. Respondent refers Petitioner to the documents produced herewith.

INTERROGATORY NO. 14:

Describe in detail all facts and identify all documents and things relating to any alleged association between Petitioner and Respondent.

ANSWER:

There is no relationship between Respondent and Petitioner.

INTERROGATORY N0. 15:

Identify any members of the public known to Respondent to have been or who may have been confused with respect to Respondent's Mark as a result of, or with respect to, the use by Petitioner of the mark COMFORT CLUB; and:

(a) Describe each such instance of confusion; and

(b) Identify any persons who can testify regarding each such instance.

ANSWER:

Respondent does not understand the request as drafted. Respondent is unclear what Petitioner means by "any members of the public known to Respondent to have been or who may have been confused with respect to Respondent's Mark as a result of, or with respect to, the use by Petitioner of the mark COMFORT CLUB." Subject to the foregoing, Respondent is not aware of any members of the public to have been or who may have been confused with respect to Respondent's Mark.

INTERROGATORY NO. 16:

Identify each person that was a potential customer of Respondent who would have received any advertising or marketing material displaying Respondent's Mark.

ANSWER:

Respondent would identify those 5,000 plus customers to whom Respondent distributed flyers beginning in January 2008. Respondent identifies the individuals as J. Does 1-5,000. Respondent also identifies every single individual who has ever accessed its website, the Better Business Bureau's website on which they may have viewed Respondent's advertisements of its COMFORTCLUB mark. Respondent also advertises on the radio and Respondent would identify each and every listener during the time Respondent's COMFORTCLUB was being advertised.

INTERROGATORY NO. 17:

Describe Respondent's present or future plans to market goods and/or services offered under Respondent's Mark beyond the scope of that which Respondent currently offers.

ANSWER:

Respondent expects to continue to use its COMFORTCLUB mark as it has been using it since 2008.

INTERROGATORY NO. 18:

State the date of, and describe in detail the circumstances of, when you first became aware of Petitioner's Mark.

ANSWER:

Respondent first became aware of Petitioner's infringement of Respondent's trademark while conducting an online search some time in 2011.

INTERROGATORY NO. 19:

State all facts on which Respondent relies in support of the allegation in its application for U.S. Registration No. 3,618,331 that "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive...."

ANSWER:

In Responding to this Interrogatory, Respondent incorporates its answers to Interrogatories Nos. 1, 2, 3, 4, 8 and Interrogatory No. 18.

INTERROGATORY NO. 20:

State all facts on which Respondent relies in support of the allegation in its application for U.S. Registration No. 3,618,331 for COMFORTCLUB that Respondent was the rightful "owner of the trademark/service mark sought to be registered."

ANSWER:

In Responding to this Interrogatory, Respondent incorporates its answers to Interrogatories Nos. 1, 2, 3, 4, 8 and Interrogatory No. 18.

INTERROGATORY NO. 21:

Identify all interactions Respondent had with Petitioner or Petitioner's legal representatives prior to the filing of its application for U.S. Registration No. 3,618,331.

ANSWER:

None.

INTERROGATORY NO. 22:

Describe all facts and identify all documents and things upon which Respondent bases its denials in Respondent's Answer to the Petition to Cancel in this proceeding.

ANSWER:

Respondent is unable to provide a narrative answer to this interrogatory and instead relies on information that is available from its business records and electronically stored records in accordance with Federal Rule of Civil Procedure 33(d). Respondent also incorporates its answers to Interrogatories Nos. 1-4, 8, and 18.
In drafting Respondent's Answer, Respondent denied the facts and claims in the numbered paragraphs corresponding to Petitioner's petition for cancellation that were untrue and with which Respondent could not agree.

By way of example, in Paragraph's 1-3, from Petitioner's Petition to Cancel, Petitioner alleges that it owns the trademark "COMFORT CLUB", Application No. Application No. 85/880911, filed March 20, 2013. In fact, Petitioner does not own the "COMFORT CLUB" mark and has since abandoned its U.S. Trademark application.

Petitioner also claims it owns the COMFORT CLUB mark and has been using it since 2006. Respondent denied this paragraph because it is untrue. It is untrue, because Petitioner has failed to produce any evidence that is has used the Mark since 2006. Petitioner filed an application with the U.S. Trademark Office on March 20, 2013 alleging as its filing basis an intent to use the COMFORT CLUB mark in commerce rather than actual use.

Petitioner's U.S. Trademark Application No. 85/880911 was abandoned by Petitioner.

Petitioner willfully made false statements knowing they were punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001. Despite such knowledge, Petitioner willfully filed a federal trademark application, filed under 15 U.S.C. Section 1051(b), asserting that it believed it was entitled to use the Mark in commerce and that no other entity, including Respondent, had the right to use the Mark in commerce. This was a willfully false statement made by Petitioner in March 2013, just shortly before filing its Petition to Cancel.

Petitioner's Petition to Cancel contradicts basic representations made by Petitioner's attorneys' and/or agent's in the written documents and verbal discussions prior to the initiation of this cancellation proceeding.

Petitioner signed a sworn declaration before the U.S. Trademark Office, and was warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001. Petitioner also declared under oath that under 15 U.S.C. Section 1051(b), (1) it believed it was entitled to use such mark in commerce; (2) that to the best of its knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and (3) that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true. Not only did Petitioner abandon its federal trademark application, but it has failed to provide any evidence it used the COMFORTCLUB Mark in commerce since 2006, and there are zero documents attached as exhibits to Petitioner's Petition to Cancel indicating any use by Clockwork IP, LLC. of the COMFORTCLUB mark as early as 2003, or from 2003 to 2008.

Additionally, according to documents produced by Petitioner in this proceeding appear to assert that DirectEnergy, Inc. or Clockwork Home Services, Inc. may have used a substantially similar mark, COMFORT CLUB.

Respondent also bases its affirmative defenses on the timing of Petitioner's Petition for Cancellation, which was filed well over five (5) years after Respondent began using the COMFORTCLUB mark in commerce.

Respondent was never owned a "One Hour Heating and Air" franchisee and never attended any meeting

where “One Hour Heating and Air” marketing materials were distributed.

Respondent’s date of first use of its COMFORTCLUB mark precedes the date of any applicable membership agreement entered into between Respondent and Clockwork Home Services, Inc. Respondent has never done business with Petitioner. Respondent has never entered into a contract with Petitioner. Respondent is not a licensee of Petitioner’s

Respondent declines to provide a further narrative answer to this interrogatory because the interrogatory asks for information that is available from documents produced in this case, on which Respondent relies in answering this Interrogatory, and the pleadings filed in this case including the Petition to Cancel and Answer and Affirmative Defenses, and this interrogatory is best addressed via a deposition. Fed. R. Civ. P. 33(d).

INTERROGATORY NO. 23:

Describe all facts and identify all documents and things upon which Respondent bases its Affirmative Defenses in Respondent 's Answer to the Petition to Cancel in this proceeding.

ANSWER:

In reliance upon Federal Rule of Civil Procedure 33(d), Respondent declines to provide a narrative answer to this interrogatory and relies on its business and electronically stored records that were produced in this case. Fed. R. Civ. P. 33(d). Respondent relies on any and all documents produced herewith, including (1) its business records, (2) documents produced by Petitioner in this case, (3) conversations Respondent has had with Petitioner’s agents or employees, (4) representations made by Petitioner and its employees, (5) representations made by Petitioner’s attorneys during the pendency of this matter and prior to the initiation of this matter, (6) Respondent’s federal trademark application and registration materials, and (7) Respondent’s memory, (8) Petitioner’s federal trademark application and the corresponding file materials, (9) Petitioner’s abandonment of its federal trademark registration, (10) any and all documents that Petitioner may produce in this case, or identify in its Disclosures, discovery documents, pretrial disclosures, or other materials filed in this proceeding, (11) all corporate registration and formation documents and dissolution documents, (12) all assignments on file with the U.S. Patent and Trademark Office. To the extent this interrogatory calls for a narrative from Respondent and to the extent Respondent has inadvertently failed to recall each and every single document, fact, or circumstance upon which it relies in defending against Petitioner’s baseless claims, Respondent specifically reserves the right to supplement and amend this

response.

INTERROGATORY NO. 24:

Identify all persons having knowledge of the denials asserted in Respondent's Answer to the Petition to Cancel, and describe the substance of those persons' knowledge.

ANSWER:

Respondent declines to provide a narrative answer to this interrogatory because the interrogatory asks for information that is available from its business and electronically stored records. Fed. R. Civ. P. 33(d). Respondent would refer Petitioner to documents produced by Respondent in this case and Respondent's Rule 26(a)(1) disclosures for a list of those individuals Respondent believes have the most knowledge about the facts of this case. Subject to the foregoing,

John Paccuca, Blue Stream Services, Inc., 850 Vandalia Street, Suite 120, Collinsville, IL 62234. It is believed that Mr. Paccuca has information and knowledge regarding Respondent's priority of use over that of Petitioner.

Travis Barnaby, 4620 Industrial Street, Suite C, Rowlett, TX 75088, an employee of Barnaby Heating & Air and has worked in Respondent's office and it is believed that Mr. Barnaby has information and knowledge regarding Respondent's priority of use over that of Petitioner.

Shelby Cuellar, 4800 Northway Drive, Apartment 2N, Dallas, TX 75206, the nephew of Respondent's Mr. Charlie Barnaby, an employee of Barnaby Heating & Air and has worked in Respondent's office and it is believed that Mr. Barnaby has information and knowledge regarding Respondent's priority of use over that of Petitioner.

Thomas Dougherty, 6305 Carrizo Drive, Granbury, TX 76049. It is believed that Mr. Dougherty has information and knowledge regarding Respondent's priority of use over that of Petitioner.

Paul Riddle, Vice President of Operations for Clockwork Home Services. Mr. Riddle has information regarding the history and use of the COMFORTCLUB mark by Barnaby, prior to use of the Mark by Petitioner.

Randy Kelley, 1510 Stevens St., The On Time Experts, Dallas, Texas 75218. Mr. Kelley is a former franchisee of Petitioner and it is believed that Mr. Kelley has information pertaining to Petitioner's use of the "Comfort Club" mark. Mr. Kelly is a former franchisee of Petitioner's and has knowledge of Respondent's priority of use of the COMFORTCLUB mark over that of Petitioner.

Mr. Jay Rol, Rol Air, Plumbing and Heating, 7510 Lannon Avenue NE, Albertville, MN 55301. Mr. Rol is a current user of the COMFORTCLUB mark under license from McAfee Heating & Air Conditioning, Inc. and has information pertaining to McAfee Heating & Air's use of the COMFORTCLUB mark in commerce.

Juli Cordray Barnaby Heating & Air LLC, 4620 Industrial Street, Suite C, Rowlett, TX 75088. Ms. Cordray is an employee of Barnaby Heating & Air and was in the office during Mr. Barnaby's telephone conversations with Petitioner's employee, Mr. Paul Riddle.

Greg McAfee, McAfee Heating & Air Conditioning, Inc., 4770 Hempstead Station Dr., Kettering, Ohio 45429. Mr. McAfee is the owner of McAfee Heating & Air Conditioning, Inc., the current assignee of the COMFORTCLUB mark from Respondent. It is believed that Mr. McAfee has knowledge of McAfee's priority over that of Petitioner, given McAfee's use of the COMFORTCLUB mark in commerce since 1999. See the documents produced in response to various Requests for Production, submitted herewith.

Charlie Barnaby owns and operates Barnaby Heating & Air and has intimate knowledge of the conception, development, marketing, and continuous use of the COMFORTCLUB mark by Respondent since the Fall or Winter of 2007 and first use in commerce beginning at least as early as January 2008.

Deborah Barnaby, R.N. co-owner of Barnaby Heating & Air, LLC, who has knowledge of the conception, development, marketing, and continuous use of the COMFORTCLUB mark by Respondent since the Fall or Winter of 2007 and first use in commerce beginning at least as early as January 2008.

Scott Boose, former President of Clockwork Home Services, Inc. who has knowledge of the dates Respondent sent cease and desist correspondence to a One Hour Heating and Air franchisee regarding the use of Respondent's COMFORTCLUB mark.

Steven Thrasher, former counsel of Respondent, who drafted a cease and desist correspondence to Clockwork Home Services, Inc.

John Pare, former Secretary of Clockwork, Inc. and counsel for Petitioner, who has knowledge of the sell and dissolution of Clockwork Home Services, Inc., the merger of various entities, including Electricians Success International, LLC, Plumbers Success International, LLC, and Roofers Success International, LLC with AirTime, LLC, the sale of AirTime, LLC to Aquila Investments, LLC, the parties to any contract between Respondent and AirTime, LLC or Respondent and Success Academy, LLC or New Millennium Academy, LLC., the assignment of Clockwork Home Services, Inc.'s or Clockwork, Inc.'s or Clockwork IP, LLC's trademarks to Aquila Investments, LLC in 2013.

Rebecca Cassel, President of Aquila Investments, LLC who has knowledge of the dissolution and/or merger of AirTime, LLC, and the assignment of intellectual property to Aquila Investments, LLC.

Robert R. Beckmann, former Secretary of VenVest Ventures, Inc. who has knowledge of the merger of VenVest Ventures, Inc. with Clockwork Home Services, Inc.

Robin Faust, formerly with Success Academy, who received and sent emails from and to Respondent's Charles Barnaby regarding the January 2008 advertisement showing Respondent's use of the COMFORTCLUB mark prior to attending any Success Academy Senior Technician Training.

Any and all employees of Success Academy.

Any and all employees of AirTime, LLC. These individuals have knowledge of the materials that are shared with independent contractors who are members of AirTime 500, versus the proprietary materials that are shared with Clockwork Home Services, Inc. franchisees.

Sean Collin, of Pitts & Eckel, P.C., who has knowledge of the transfer and assignment of intellectual property to Aquila Investment, LLC and the dissolution of Clockwork Home Services, Inc. and Clockwork, Inc.

Any and all employees of Respondent.

INTERROGATORY NO. 25:

Identify all persons having knowledge of allegations and facts which you asserted in these interrogatory responses and describe the substance of those persons' knowledge.

ANSWER:

Respondent incorporates its response to Interrogatory No. 25 herein.

INTERROGATORY NO. 26:

Identify each person whom Respondent may call to testify on his behalf in this Cancellation.

ANSWER:

Respondent incorporates its response to Interrogatory No. 25 herein

INTERROGATORY NO. 27:

Describe all facts and identify all documents and things relating to and supporting Respondent's Affirmative Defenses in its Answer to Petitioner's Petition to Cancel.
Identify all documents and things on which Respondent intends to rely in this Cancellation.

ANSWER:

Respondent will rely on any and all documents that tend to support its defenses in this case, including, but not limited to any and all documents identified in Interrogatories Nos. 1 – 26, above. Respondent specifically reserves the right to supplement this response.

RESPONDENT'S OBJECTIONS AND RESPONSES TO PETITIONER'S FIRST REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS

REQUEST FOR PRODUCTION NO. 1:

All documents and things identified in Respondent's responses to Petitioner's First Set of Interrogatories to

Respondent served in connection with this Cancellation.

ANSWER:

See documents produced herewith.

REQUEST FOR PRODUCTION NO. 2:

All documents and things not identified in Respondent's responses to Petitioner's First Set of Interrogatories to Respondent which nonetheless were reviewed or relied upon by Respondent in preparing answers to said Interrogatories, or which support Respondent's responses thereto.

ANSWER:

See documents produced herewith.

REOUEST FOR PRODUCTION NO. 3:

All documents and things relating to the following:

(a) Respondent's creation, selection, development, clearance, approval, and adoption of Respondent's Mark, including all documents relating to any trademark searches which were conducted by or for Respondent in connection with Respondent's Mark, the results thereof, and samples of any marks or names considered and rejected.

(b) The content or result of any meeting or discussion at which Respondent's consideration, acquisition, selection, approval, or adoption of Respondent's Mark were discussed;

(c) Further investigations conducted by or on behalf of Respondent into the current status of any marks uncovered by trademark searches which were conducted by or for Respondent in connection with Respondent' s Mark;

(d) Information, notice, or opinion(s) concerning conflict or potential conflict associated with your adoption, use, or registration of Respondent's Mark;

(e) All communications in which a person has recommended or cautioned against

Respondent's acquisition, selection, development, adoption , or use of Respondent' s Mark; and

(f) All information, notices, or opinions concerning the availability of Respondent' s Mark for use or registration.

ANSWER:

See documents produced herewith.

REQUEST FOR PRODUCTION NO. 4:

All documents and things relating to communications issued or received by Respondent relating to Respondent's Mark.

ANSWER:

See documents produced herewith.

REQUEST FOR PRODUCTION NO. 5:

All documents and things relating to communications issued or received by Respondent relating to Petitioner's Marks.

ANSWER:

See documents produced herewith.

REQUEST FOR PRODUCTION NO. 6:

All documents and things relating to the first use anywhere and the first use in commerce of Respondent's Mark by or on behalf of Respondent.

ANSWER:

See documents produced herewith.

REQUEST FOR PRODUCTION NO. 7:

All documents and things relating to or identifying the nature of Respondent's business, including all

products and services ever offered by Respondent.

ANSWER:

See documents produced herewith.

REQUEST FOR PRODUCTION NO. 8:

Representative examples - such as products, labels, packaging, tags, brochures, advertisements, promotional items, point of sale displays, websites, informational literature, stationery, invoices, or business cards - showing each and every variation in the form of Respondent's Mark which Respondent (or other parties with Respondent's consent) has used, uses, or plans to use depicting Respondent's Mark.

ANSWER:

See documents produced herewith.

REQUEST FOR PRODUCTION NO. 9:

All documents and things relating to any plans which Respondent has to expand the types of goods or services currently offered under Respondent's Mark.

ANSWER:

See documents produced herewith.

REQUEST FOR PRODUCTION NO. 10:

All documents and things relating to the types of customers to whom Respondent has provided or is providing products or services identified by Respondent' s Mark.

ANSWER:

See documents produced herewith.

REQUEST FOR PRODUCTION NO. 11:

All documents supporting or negating Respondent's priority and ownership of COMFORTCLUB, including all documents and things relating to the first use anywhere and the first use in commerce of Petitioner's Mark.

ANSWER:

See documents produced herewith.

REQUEST FOR PRODUCTION NO. 12:

All agreements and policies between Petitioner and Respondent, Respondent and SGI, and Respondent and AirTime 500.

ANSWER:

There are no agreements or policies between Respondent and Petitioner. There are no agreements or policies between Respondent and SGI. There are no agreements or policies between Respondent and AirTime 500. Subject to the foregoing, see documents produced herewith.

REQUEST FOR PRODUCTION NO. 13:

All written communications between Petitioner and Respondent, Respondent and SGI, and Respondent and AirTime 500.

ANSWER:

There are no written communications between Respondent and Petitioner. For any correspondence between SGI or AirTime 500 and Respondent, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 14:

All documents and things relating to Respondent's attendance of any Success Day or Success Academy events, CONGRESS franchise events, SGI EXPO events, BRAND DOMINANCE events, and Senior Tech events, including without limitation all 2008 events and sessions.

ANSWER:

Respondent did not attend CONGRESS franchise events, SGI EXPO events, and BRAND DOMINANCE events. For documents responsive to the remainder of this request, see documents produced herewith.

REQUEST FOR PRODUCTION NO. 15:

All documents and things relating to Respondent's past, present, and future marketing plans and methods for products or services identified by Respondent's Mark.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 16:

All documents and things relating to your distribution of and trade channels for the services identified by Respondent' s Mark.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 17:

All documents and things relating to communications between Respondent and third parties concerning the advertisement or promotion of Respondent's Mark.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 18:

All documents and things relating to communications between Respondent and any third party, including consumers, concerning Respondent's Mark or Petitioner's Mark.

ANSWER:

Respondent does not possess documents relating to communications between Respondent and any third party, including consumers, concerning Petitioner's Mark. The documents responsive to the remainder of this request are produced herewith.

REQUEST FOR PRODUCTION NO. 19:

All documents and things relating to expenses for advertisement or promotion of Respondent's Mark, including all documents that summarize or tabulate existing or projected advertising expenditures and expenses associated with Respondent's use of Respondent's Mark.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 20:

All documents and things relating to communications between Respondent and any third party, including consumers and Petitioner franchisees, concerning products and services on which Respondent uses, or has used, the term COMFORTCLUB in commerce.

ANSWER:

Petitioner does not have franchisees. None.

REQUEST FOR PRODUCTION NO. 21:

All documents and things relating to Petitioner 's Marks, including all documents and things relating to any search, inquiry, investigation, or marketing survey that has been, is being, or will be conducted relating to Petitioner's Mark.

ANSWER:

Respondent intends on relying on every single assignment or transfer made by Clockwork Home Services, Inc. and Aquila Investments, Inc. which may be obtained by any party to this proceeding by accessing the U.S. Patent and Trademark Office records, Assignments and Recording Division.

REQUEST FOR PRODUCTION NO. 22:

All documents and things relating to any possibility of confusion, mistake, or deception as to the source of original or sponsorship of any product or service arising out of use of Respondent's Mark.

ANSWER:

None.

REQUEST FOR PRODUCTION NO. 23:

All documents and things relating to any likelihood of confusion, deception or mistake between Respondent's Mark and Petitioner's Marks, including Petitioner's Mark as used by licensee.

ANSWER:

None.

REQUEST FOR PRODUCTION NO. 24:

All documents and things relating to any instances of actual confusion between Respondent's Mark and Petitioner's Marks, including but not limited to documents and things relating to misdirected mail, e-mail, or telephone calls.

ANSWER:

None.

REQUEST FOR PRODUCTION NO. 25:

All documents and things relating to any instances of actual confusion regarding a connection between Petitioner or Petitioner's services and Respondent.

ANSWER:

None.

REQUEST FOR PRODUCTION NO. 26:

All documents and things relating to Respondent's communications with third parties regarding this proceeding.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 27:

All documents and things relating to any communications between Respondent and Petitioner concerning Respondent's Mark.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 28:

All documents and things relating to any communications between Respondent and any other party who has used or owns any rights in any names or marks, including design marks, which are comprised of or include the words COMFORT or CLUB.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 29:

All documents and things relating to the strength or distinctiveness of Respondent's Mark or Petitioner 's Mark.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 30:

All documents and things relating to any application(s) submitted by Respondent to register, maintain, or modify Respondent's Mark on any trademark register worldwide, and any registration(s) issued as a result thereof.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 31:

All documents and things identified in Respondent's Initial Disclosures.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 32:

All documents and things not identified in Respondent's Initial Disclosures which nonetheless were reviewed or relied upon in preparing Respondent's Initial Disclosures.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 33:

All documents showing or relating to Respondent's awareness of, and first dates of awareness of Petitioner's Mark.

ANSWER:

Respondent is not aware that Petitioner owns any mark.

REQUEST FOR PRODUCTION NO. 34:

All documents and things showing use of the term COMFORTCLUB in commerce by Respondent in connection with the sale, offer for sale, and/or distribution of any product or service at any time.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 35:

All documents relating to or detailing Respondent's selection of Respondent's Mark and the decision to file

a U.S. Trademark application for COMFORTCLUB.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 36:

All documents relating to the goods and services with which Respondent's Mark has been, is intended to be, or is currently used.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 37:

All documents and things upon which Respondent bases its denial of Petitioner's allegation in paragraph 8 of Petitioner's Petition to Cancel in this proceeding that "Respondent, Barnaby Heating and Air, has been an AirTime member and licensee of Petitioner since August 21, 2007."

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 38:

All documents and things upon which Respondent bases its denial of Petitioner's allegation in paragraph 22 of Petitioner's Petition to Cancel in this proceeding that "Petitioner introduced its COMFORTCLUB mark at CONGRESS in 2006 ... and has come to be associated with the maintenance plans offered by franchisees and member affiliates for the performance and delivery of home heating, air conditioning and ventilation services."

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 39:

All documents and things upon which Respondent bases its denial of Petitioner' s allegation in paragraph

23 of Petitioner's Petition to Cancel in this proceeding that "Petitioner has priority based upon its prior use and contractual ownership of Petitioner's 'COMFORTCLUB' Mark."

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 40:

All documents and things upon which Respondent bases its denial of Petitioner's allegation in paragraph 23 of Petitioner's Petition to Cancel in this proceeding that Respondent's COMFORTCLUB mark is virtually identical to Petitioner's COMFORTCLUB in sound, appearance, connotation, and form.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 41:

All documents and things upon which Respondent bases its denial of Petitioner's allegation in paragraphs 36 and 37 of Petitioner's Petition to Cancel in this proceeding.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 42:

All documents and things upon which Respondent bases its other denials and admissions in Respondent's Answer to the Petition to Cancel in this proceeding.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 43:

All documents and things upon which Respondent bases its First Affirmative Defense in paragraph 41 - Failure to State a Claim.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 44:

All documents and things upon which Respondent bases its Second Affirmative Defense in paragraph 42- Priority.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 45:

All documents and things upon which Respondent bases its Third Affirmative Defense in paragraph 43 - Fair Use.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 46:

All documents and things upon which Respondent bases its Fourth Affirmative Defense in paragraph 44 - Statute of Limitations.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 47:

All documents and things upon which Respondent bases its Fifth Affirmative Defense in paragraph 45 -

Estoppel.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 48:

All documents and things upon which Respondent bases its Sixth Affirmative Defense in paragraph 46 -

Laches.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 49:

All documents and things upon which Respondent bases its Seventh Affirmative Defense in paragraph 47 - Acquiescence.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 50:

All documents and things upon which Respondent bases its Eighth Affirmative Defense in paragraph 48 -

No Liability.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 51:

All documents and things upon which Respondent bases its Ninth Affirmative Defense in paragraph 49 - No

Standing.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 52:

All documents and things upon which Respondent bases its Tenth Affirmative Defense in paragraph 50 - Non-Use and Abandonment.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 53:

All documents and things upon which Respondent bases its Eleventh Affirmative Defense in paragraph 51.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 54:

All documents and things identified in Respondent's Answer to the Petition to Cancel in this proceeding.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 55:

All documents referring or relating to Respondent' s uses of any term comprised of or containing "COMFORT " and/or "CLUB" including but not limited to use as the common commercial name for a type of product or service, to describe a feature or characteristic of any product or service, as a verb, or in lowercase letters.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 56:

All documents and things sufficient to identify the particular market or market segment in which Respondent's services compete, and all competitors.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 57:

Representative examples of advertising and promotional materials in each media used (e.g., print, television, radio, internet, direct mail, billboards) featuring, displaying, or containing Respondent's Mark

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 58:

Representative samples of all websites, advertisements, catalogs, brochures, posters, flyers, and any other

printed or online promotional materials that have ever been used by Respondent in connection with Respondent's Mark.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 59:

Documents sufficient to show all media (e.g., print, television, radio, internet, direct mail, billboards) in which Respondent has advertised or promoted Respondent's Mark, including but not limited to media schedules and advertising plans.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 60:

Documents sufficient to show the type, identity, and geographic distribution of all media in which Respondent has advertised or intends to advertise goods and services using Respondent's Mark.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 61:

All press releases, articles, and clippings relating to or commenting upon Respondent's Mark or Respondent's services.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 62:

Documents sufficient to show all forms in which Respondent has depicted, displayed, or used Respondent's Mark, including but not limited to all designs, stylizations, and/or logos.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 63:

To the extent not covered by other requests, all documents referring or relating to investigations, searches, research focus groups, reports, surveys, polls, studies, searches, and opinions conducted by or for Respondent relating or referring to Respondent's Mark.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 64:

All documents referring or relating to any objections Respondent has received concerning his use and/or registration of Respondent's Mark.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 65:

Documents sufficient to identify the annual sales revenues in units from sales of goods and services by Respondent under Respondent's Mark.

ANSWER:

To the extent these materials exist, see responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 66:

Documents sufficient to identify any advertising expenses incurred by Respondent in connection with use of Respondent' s Mark.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 67:

Documents sufficient to identify the annual advertising and promotional expenditures for Respondent's Goods from the first use of Respondent's Mark to the present.

ANSWER:

To the extent these materials exist, see responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 68:

All documents referring or relating to Respondent's annual expenditures for developing and marketing Respondent's Mark.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 69:

All documents referring or relating to judicial or administrative proceedings in any forum referring or relating to Respondent' s Mark and/or Respondent's Goods, other than this proceeding.

ANSWER:

None.

REQUEST FOR PRODUCTION NO. 70:

All documents referring or relating to all adversarial proceedings to which Respondent has been a party , including domain name disputes, inter-party proceedings before the U.S. Trademark Trial & Appeal Board or other nation 's trademark offices, or lawsuits filed in a court anywhere in the world.

ANSWER:

None.

REQUEST FOR PRODUCTION NO. 71:

All documents referring or relating to agreements Respondent has entered into (oral or written) relating to Respondent's Mark, including but not limited to development agreements, license agreements, co-branding agreements, consent agreements, coexistence agreements, assignments, settlement agreements, and advertising agreements.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 72:

All documents and things sufficient to identify all uses of Respondent's Mark by Respondent or Respondent's licensees, including use in marketing materials, internal materials, and Respondent's websites.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 73:

All documents and things sufficient to identify the meaning of Respondent's Mark and the messages that Respondent intends to convey to consumers with respect to Respondent's Mark.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 74:

All documents and things sufficient to identify the ways in which the type of consumer to whom Respondent has been marketing or will market its goods and services under Respondent's Mark is different from the type of consumer to whom Respondent believes Petitioner is marketing its goods and services.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 75:

All documents referring or relating to all known third-party uses of terms comprised of or containing "Comfort" and "Club" in connection with HVAC or any other goods or services offered by Respondent, or use of "comfortclub" as the common commercial name for a type of product or service, to describe a feature or characteristic of any product or service, as a verb, or in lowercase letters.

ANSWER:

To the extent these materials are in Respondent's possession, see responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 76:

All documents relied upon by Respondent to support the allegation in its application for U.S. Registration No. 3,618,331 that "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive."

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 77:

All documents relied upon by Respondent to support the allegation in its application for U.S. Registration No. 3,618,331 that Respondent was the rightful "owner of the trademark/service mark sought to be registered."

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 78:

All documents referring or relating to any and all interactions Respondent had with Petitioner or Petitioner's legal representatives prior to the filing of its application for U.S. Registration No. 3,618,331.

ANSWER: None.

REQUEST FOR PRODUCTION NO. 79:

All documents referring or relating to Respondent's reasons for selecting the mark "COMFORTCLUB" as a compounded or unitary mark.

ANSWER: See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 80:

All documents referring or relating to the similarity of Respondent's COMFORTCLUB mark and Petitioner's COMFORTCLUB mark.

ANSWER: Petitioner does not own a COMFORTCLUB mark, so none.

REQUEST FOR PRODUCTION NO. 81:

All documents referring or relating to the priority and seniority of Petitioner's COMFORTCLUB mark.

ANSWER: None.

REQUEST FOR PRODUCTION NO. 82:

All documents referring or relating to the similarity in the services listed in the Respondent's Mark and the services marketed or sold by Petitioner under Petitioner's Mark.

ANSWER: Not applicable, as Petitioner and Respondent are not similar entities. Petitioner is not a provider of air conditioning and heating services.

REQUEST FOR PRODUCTION NO. 83:

All documents and things relating to Respondent's document retention and destruction policies or

guidelines, if any, which may relate to documents covered by any request herein.

ANSWER: None.

REQUEST FOR PRODUCTION NO. 84:

All documents Respondent intends to introduce into evidence in this proceeding.

ANSWER: Respondent has not made a determination as to which documents Respondent intends to introduce into evidence in this proceeding. When the time comes for the introduction of evidence, Respondent may, or may not, introduce each and every document produced herewith, including any and all documents on which Petitioner may or may not introduce.

REQUEST FOR PRODUCTION NO. 85:

All documents on which Respondent intends to rely during the testimony period in support of Respondent's case and all other documents relating to such documents.

ANSWER: Respondent has not made a determination as to which documents Respondent intends to rely upon during the testimony period. When the testimony period opens, Respondent may, or may not, rely on each and every document produced herewith, including any and all documents on which Petitioner may rely or may not rely.

REQUEST FOR PRODUCTION NO. 86:

For each fact witness whom Respondent intends to call in this proceeding, please produce the following:

(a) A resume or employment history;

(b) A written report containing a complete statement of all of his or her opinions and conclusions relevant to this case and the grounds therefor; and

(c) Other information considered by the witness in forming his or her

opinions.

ANSWER: None.

REQUEST FOR PRODUCTION NO. 87:

All documents and things supporting cancellation of Respondent's Mark because Respondent perpetrated fraud on the USPTO.

ANSWER: None.

REQUEST FOR PRODUCTION NO. 88:

All documents and things supporting Respondent' s position that it did not perpetrate fraud on the USPTO with respect to Respondent's Mark.

ANSWER: See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 89:

All documents and things relating to each expert witness Respondent has engaged in connection with this proceeding, including but not limited to, resumes, curriculum vitae, references, promotions, matters, opinions, reports, exhibits, and communications concerning any issue presented or considered herein.

ANSWER: None.

REQUEST FOR PRODUCTION NO. 90:

Any written report, memorandum, opinion, or other written documents and things regarding either Respondent's Mark or Petitioner's Marks that was prepared by any expert witness, regardless of whether Respondent presently intends to call such expert witness in this proceeding.

ANSWER: None.

RESPONDENT'S OBJECTIONS AND RESPONSES
TO PETITIONER'S FIRST REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

Respondent has no valid rights in the mark COMFORTCLUB or any variation thereof. At no time was Respondent the owner of COMFORTCLUB.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 2:

Petitioner is the rightful owner of the COMFORTCLUB Mark as used for Petitioner's services and Respondent's services in the U.S.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 3:

At no time was Respondent the owner of COMFORTCLUB.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 4:

Petitioner's Mark has been in use in interstate commerce by Petitioner and/or licensees of Petitioner since at least as early as 2006.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 5:

Respondent has been an AirTime 500 member and licensee of Petitioner since August 21, 2007, by signing the AirTime Member Agreement, Respondent agreed that "AirTime wholly owns and/or has protectable legal rights in and to the AirTime Resources whether ...(b) the AirTime Resources are subject to copyright, trademark ,tradename, and/or patent rights of AirTime ..." In the Member Agreement, Respondent agreed

"[n]ot to use any or all of the AirTime Resources for any purpose other than your valid participation in the AirTime Program . ..[and N]othing in this Agreement shall be construed as conveying to you ...(ii) any license to use, sell, exploit, .copy or further develop any such AirTime Resources." Petitioner's Mark falls under the umbrella of the term "AirTime Resources" as described in said Member Agreement.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 6:

Respondent attended an SGI "Senior Tech" course in March, 2008. Petitioner's COMFORTCLUB Mark and Petitioner's services were discussed and promoted to Airtime members and licensees at the SGI "Senior Tech" course in March, 2008.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 7:

Respondent, without the authorization of Petitioner, filed Application No. 77/420,784 for COMFORTCLUB after attending an SGI course covering Petitioner's services rendered under Petitioner's Mark.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 8:

At all relevant times, Respondent's use of COMFORTCLUB was only as a licensee of Petitioner pursuant to Respondent's AirTime Member Agreement. Respondent was never an owner of the COMFORTCLUB mark.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 9:

Respondent' s Application No. 77/420,784 for Respondent's Mark was filed fraudulently. Respondent' s

Mark is thus void.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 10:

Petitioner used the mark COMFORTCLUB in U.S. commerce before any use of the mark COMFORTCLUB in U.S. commerce by Respondent commenced.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 11:

Prior to March 13, 2008, the filing of Application No. 77/420,784, Respondent was aware of Petitioner's senior and prior right in Petitioner's Mark for both Petitioner's services and Respondent's services.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 12:

Respondent's Mark is identical to Petitioner's Mark.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 13:

Respondent's Mark is confusingly similar to Petitioner's Mark.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 14:

Respondent's services are the same as Petitioner's services.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 15:

Respondent's services are sold through the same channels of trade as Petitioner's services and directed to the same consumers.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 16:

Respondent is no longer an AirTime Member and is using the COMFORTCLUB mark without authorization from Petitioner.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 17:

Respondent's Mark so closely resembles Petitioner's Mark such as to cause confusion, mistake, or deception, and/or to cause the consuming public to believe that Respondent's services marketed or sold in connection with Respondent's Mark originate with or are sponsored, endorsed, licensed, authorized and/or affiliated or connected with Petitioner and/or Petitioner' s services in violation of Section 2(d) of the Lanham Act.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 18:

Petitioner is and will be damaged by registration of Respondent's Mark.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 19:

Petitioner's rights in Petitioner's Mark predate any use by Respondent of Respondent' s Mark in U.S. commerce.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 20:

All use of the COMFORTCLUB mark by Respondent inured to the benefit of Petitioner, the rightful owner of the COMFORTCLUB mark in the U.S.·

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 21:

On March 13, 2008, Respondent's Owner and Principle Partner, Mr. Charles Barnaby, was aware of Petitioner's senior rights in COMFORTCLUB but signed a fraudulent declaration in support of Respondent's Application No. 77/420,784, with an intent to deceive. the U.S. Trademark Office into granting registration of Respondent's Mark.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 22:

On March 13, 2008, Respondent's Owner and Principle Partner, Mr. Charles Barnaby, was aware of that it was not the rightful owner of the COMFORTCLUB Mark and Application No. 77/420,784, but signed a fraudulent declaration in support of Respondent's application for registration of Respondent's Mark, with an intent to deceive the U.S. Trademark Office into granting registration of Respondent's Mark.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 23:

Respondent's Declaration in Application No. 77/420,784 stating that "to the best of his/her knowledge and

belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive...." is false.

Answer:

Denied.

REQUEST FOR ADMISSION NO. 24:

Petitioner established rights in the United States in its COMFORTCLUB Mark prior to 2008.

Answer: Denied.

REQUEST FOR ADMISSION No. 25:

Since as early as 2006, Petitioner has established extensive, common-law rights in COMFORTCLUB Mark.

Answer: Denied.

REQUEST FOR ADMISSION NO. 26:

Petitioner's rights in COMFORTCLUB date from prior to the filing date of Respondent's Mark or Respondent' s alleged use in United States commerce of Respondent's Mark.

Answer: Denied.

REQUEST FOR ADMISSION NO. 27:

Respondent' s Mark is not entitled to continued registration pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § l 125(d) because it is likely to cause confusion with the Petitioner' s Mark.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 28:

Applicant committed fraud on the U.S. Patent and Trademark Office.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 29:

Respondent's First Affirmative Defense in paragraph 41 of its Answer: to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 30:

Respondent' s Second Affirmative Defense in paragraph 42 of its Answer: to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Denied.

REQUEST FOR ADMISSION NO. 31:

Respondent' s Third Affirmative Defense in paragraph 43 of its Answer: to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Denied.

REQUEST FOR ADMISSION NO. 32:

Respondent' s Fourth Affirmative Defense in paragraph 44 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Denied.

REQUEST FOR ADMISSION NO. 33:

Respondent' s Fifth Affirmative Defense in paragraph 45 of its Answer to Petitioner' s Petition to Cancel is without merit and unsupported by evidence.

Answer: Denied.

REQUEST FOR ADMISSION NO. 34:

Respondent's Sixth Affirmative Defense in paragraph 46 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Denied.

REQUEST FOR ADMISSION NO. 35:

Respondent' s Seventh Affirmative Defense in paragraph 47 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Denied.

Dated: April 16, 2015

Respectfully,

Barnaby Heating & Air, LLC

/s/ Julie Celum Garrigue

JULIE CELUM GARRIGUE

Celum Law Firm, PLLC
11700 Preston Rd.
Suite 660, PMB 560
Dallas, Texas 75230
P: 214.334.6065
F: 214.504.2289
E: Jcelum@celumlaw.com

Attorney for Respondent
Barnaby Heating & Air, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **RESPONDENT'S SECOND AMENDED RESPONSE TO PETITIONER'S FIRST SET OF INTERROGATORIES, FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS, AND FIRST REQUEST FOR ADMISSION** was served on counsel for Petitioner and counsel for Co-Respondent, this 16th day of April 2015, by email and by sending the same via First Class Mail:

Brad R. Newberg
McGuireWoods, LLP
1750 Tysons Boulevard
Suite 1800
Tysons Corner, VA 22102-4215
T: 703.712.5061 (Direct Line)
F: 703.712.5187
Email: bnewberg@mcguirewoods.com

Counsel for Petitioner, Clockwork IP, LLC

Melissa Replogle, Esq.
Replogle Law Office, LLC
2312 Far Hills Ave., #145
Dayton, OH 45419
T: 937.369.0177
F: 937.999.3924
Email: melissa@reploglelawoffice.com

Counsel for Co-Respondent
McAfee Heating & Air Conditioning, Inc.

/s/ Julie Celum Garrigue
JULIE CELUM GARRIGUE

EXHIBIT 6
to
DeFord Declaration

Welcome! Success Academy Senior Sales Technician

March 17th, 2008

Drury Plaza
St. Louis, MO

This course is a communication training course for technicians. It is the only sales course created with the technician in mind! It will include team exercises and hands-on role plays with actual HVAC equipment. At the end of this course, the student will graduate with a certification as a Senior Technician.

Congratulations on making the commitment to being a success-minded professional and joining us here in St. Louis for The One Hour Senior Sales Technician. Success Academy will be unlike any other success training you've experienced in the contracting industry.

Prepare yourself for an exciting and enlightening day! This class is under the guidance of your **Success Trainer Jim Hughes.** He will open your eyes to a new world of both financial and personal success. The programs, procedures, systems, and strategies that will be discussed will alter your life forever and blow open a door of possibility unlike any other you've ever seen or experienced.

We assure you that whatever sacrifices you made to be here, will be well worth it. No matter what plans you changed or schedules you altered, the power this Success Training will give you will far exceed the shortcomings or drawbacks of being away from your business while here.

WHY YOU SHOULD TRAIN?

To Achieve:

1. **A minimum average revenue per call of $125 for Services**
2. **Covert 25% of repair calls into Club Memberships**
3. **Produce a minimum 1 lead per 20 scheduled services.**

SPECIAL POINTS OF INTEREST:

- **Registration begins at 7:30 AM on the 4th floor**
- **The class doors open at 8:00 AM**
- **Class begins at 8:30 AM**
- **Please turn off all cell phones and pagers**
- **Lunch is at noon**
- **Class ends at 4:30 PM**

Happy St Patrick's Day!

FOCUS ON THE FUTURE *Las Vegas* April 5

- **Fire up your team to go out and do their best for your clients, and themselves!**
- **Motivational speakers such as NFL coach Mike Ditka!**

Register Online Today!

www.focusonthefuture.org

Up coming courses....

AT500- SERVICE MANAGEMENT

APRIL 28TH - 29TH

- For Service Managers & Owners
- Learn how to get your service team positive testimonials from clients.
- Learn to hire qualified and motivated team members.
- Maximize your average tickets.

OHAC- 2 MILLION DOLLAR FACTORY

MAY 12TH-16TH

- Earn a certificate as a One Hour Home Comfort advisor.
- Obtain a minimum average job above $5200.00.
- Achieve closing rates of above 40% on marketed leads & 75% on technician leads.

BARNABY - 000721

Charles Barnaby

From: no_reply@yoursuccessacademy.com
Sent: Friday, February 22, 2008 1:46 PM
To: charlie@barnabyheatingandair.com
Subject: Success Academy Course Registration Confirmation

CONFIRMATION

YOU HAVE SUCCESSFULLY SIGNED UP FOR THE FOLLOWING CLASS

Company: Barnaby Heating & Air
You Have elected: Senior Sales Technicians (STS)
Taught on the Following Days: March 17, 18, 19 2008
Location: St. Louis

Attending: Charles Barnaby

Please remember to pick up the following materials for the course.
Supplemental Materials:

- Straight Forward Pricing Guide
- Home Comfort Survey
- Your Selling System or Sales Persuasion System 2 (Consumer Guide)
- Calculator
- Student Profile

BILLING INFORMATION

Name on Card:	Charles W Barnaby
Billing Address 1:	P.O. Box 275
Billing Address 2:	
City:	Rowlett
State:	Texas
Zip Code	75030
Card Type:	Mastercard
Card Number:	**********4819
Expiration Date:	02/2009

HOTEL INFORMATION

Name:	STL - Drury Plaza Hotel
Address 1:	2 South 4th Street
Address 2:	
City:	St. Louis
State	Missouri

Zip Code:

Phone: 314-231-3003

NOTES

PSI, RSI, ESI, & AT500 CLASSES BEGIN AT 8AM DAILY. REGISTRATION FOR CLASS BEGINS at 7:15AM. CLASS ENDS AT 4PM DAILY, EXCEPT FOR THE LAST DAY OF CLASS WHICH MAY END AT 3PM INSTEAD OF 4PM.

FRANCHISE MEMBER CLASSES

For OHAC, MR SPARKY, & BEN FRANKLIN your core classes will begin at 8:30am each day, and registration begins at 7:30. Class Ends at 4:30 Daily.

*THESE TIMES DO NOT INCLUDE THE SALES MANAGMENT EVENING CLASSES THIS CLASS STARTS AT 5PM.

Classes will always be located at Drury Plaza unless otherwise noted.

MATERIALS TO BRING

Please go over your course description to see what you need for class.

BREAKFAST

We provide breakfast and is served daily from 6:00 - 9:30 a.m. weekdays (Monday - Friday) and from 7:00 - 10:00 a.m. on weekends (Saturday & Sunday). The breakfast area is just left of the front desk.

LUNCH

Lunch is provided at Carmine's Steak House, located on the first floor of the Drury Plaza Hotel.

DINNER

Dinner is on your own. Drury Plaza does offer a complimentary reception in their lobby at 5:30pm daily. This is optional and is offered by Drury, not Success Academy.

CANCELLATION POLICY

Tuition Requirements: **Arrangements for class tuition must be made, using one of the three investment options above, prior to the start of class. Confirmations will be sent via e-mail. Success Academy is not responsible for hotel or travel reservations made prior to receiving written confirmation of class registration.**

Cancellation Requirements: **Cancellations made** 30+ days in advance will receive a full refund. **Cancellations that** occur 8 - 29 days in advance will receive a class credit less $100 cancellation fee. **Cancellations made** 7 days or less prior to the start of the class will receive a class credit less a $400.00 cancellation fee **for first time students, returning students forfeit their tuition and receive no class credit. Cancellations must be done via website or in writing and faxed to Success Academy at 314-657-4516. If a class is registered ! for but not attended and the registration has not been cancelled, the entire tuition is forfeited and no refund or credit will be issued.**

***Franchise Specific Training Classes* Cancellations made** 7 days or less prior to the start of the class will be charged a $400.00 cancellation fee by Franchise Headquarters in Sarasota. **If a class is registered for but not attended and the registration has not been cancelled, you** will be charged a $400.00 cancellation fee by Franchise Headquarters in Sarasota.

By Authorizing this form you acknowledge that you have read, understand, and agree to the hotel, tuition, and cancellation requirements above. You also agree to allow Success Academy to process this registration by the investment option selected. This registration can not be processed unless the form is completed and authorized!

Type of Attendee	Attending	Cost	Total
Regular Attendees Attending	1	$1,205.00	$1,205.00
Returning Senior Sales Technicians (STS) Attendee	0	$138.00	$0.00
		TOTAL BEFORE DISCOUNTS AND CREDITS	$1,205.00
		COUPONS	- $50.00

CREDITS	- $0.00
NEW TOTAL	$1,155.00

From: Robin Faust [mailto:rfaust@yoursgi.com]
Sent: Friday, February 22, 2008 12:18 PM
Cc: kdinger@actionairfishers.com; smile@actionauger.com; daguy@mac.com; hgarrison@aerosvc.com; sk@thekoolguys.com; crabbs@aol.com; airtech@ncinternet.net; service@allservicepros.com; annie@associatedheating.com; charlie@barnabyheatingandair.com; sales@cogburns.net; chuck@firstqualityair.com; asst484@yahoo.com; hufthvac@yahoo.com; tom@pavlikbrothers.com; salair@rogers.com; michaelcfahmie@earthlink.net
Subject: Incomplete Registration for expo

Hello All,

I am emailing you because after reviewing our registration list I show that you have an incomplete registration for Expo, the hotel cut-off for our room rate is on Sunday February 24th. The Expo will be held at the Renaissance Grand in St. Louis, Missouri. Outlined below is the agenda for the upcoming event:

- March 11th - 13th Executive Perspective
- March 13th existing members only - Success Academy Free training day
- Guest Speaker in the afternoon of free training day - Walter Bond
- March 14th Member day - Member recognition day, scoreboard, Hall of Fame, Crown Champions
- March 15th Lesson day - 3 ways to market your company

You should have received an automated response that shows a partial registration with a username and password. Use this username and password to enter into your registration. You can log on directly by clicking on the link
http://www.registerforsuccess.com
I have attached a paper copy of the registration if you would perfer to just complete the form and fax back to 314-727-7237.

Once the registration is completed you will receive an automated EXPO confirmation email to the email address you list. Your HOTEL confirmation will be emailed to you once we receive the confirmation code from the hotel.

Please contact me or the event staff, we will gladly assist you with completing the registration.

I am looking forward to seeing each of you in St. Louis!

Robin Faust
Client Advisor, AirTime 500
800-524-1954 ext 112

Important date:

AirTime 500 Expo
St. Louis, Missouri
March 11 - 15, 2008

Focus on the Future
Las Vegas, Nevada
April 5, 2008

EXHIBIT 7
to
DeFord Declaration

From:	jcelum@celumlaw.com
To:	DeFord, Amanda L.
Cc:	Newberg, Brad R.
Subject:	Re: Clockwork IP, LLC v. Barnaby Heating & Air, Cancellation No. 92057941 - Discovery Responses and Production
Date:	Monday, May 04, 2015 3:39:34 PM

Amanda & Brad,

I have not had the opportunity to go over each of the points in your letter with Mr. Barnaby. However, he has assured me there are no other responsive documents and that everything has been produced.

As for the responses relating to your client, Clockwork IP, LLC, my client is certain that he has not done business with Clockwork IP, LLC, or its predecessor. He was a member of Airtime 500. The contract he signed was between Airtime 500 and Barnaby Heating & Air, LLC. We produced financial records indicating that each and every payment Barnaby Heating & Air made as a member of Airtime 500 was made to Airtime 500. I am not certain how you expect my client to respond to your outstanding requests given the nature of Barnaby Heating & Air, LLC's relationship to Airtime 500, a Missouri Company.

I am happy to discuss any of that set forth in your letter, but without more information from your client or you, we are unable to respond in any other way to your outstanding discovery requests.

Julie Celum Garrigue
214-334-6065

On Apr 28, 2015, at 7:57 AM, DeFord, Amanda L. < ADeFord@mcguirewoods.com> wrote:

> Ms. Garrigue,
>
> Please see the attached correspondence.
>
> Thank you,
>
> Amanda
>
> Amanda L. DeFord
> McGuireWoods LLP
> One James Center
> 901 East Cary Street
> Richmond, VA 23219-4030
> 804.775.7877 (Direct Line)
> 804.698.2248 (Fax)
> adeford@mcguirewoods.com
> http://www.mcguirewoods.com

From: Julie Celum Garrigue [mailto:jcelum@celumlaw.com]
Sent: Thursday, April 16, 2015 6:24 PM
To: Newberg, Brad R.
Cc: Melissa Replogle; DeFord, Amanda L.
Subject: Re: Failure to deliver discovery

Attached are Respondent's discovery responses.

I will send the URL for the documents responsive to this discovery under separate email.

Julie Celum Garrigue

Celum Law Firm, PLLC
11700 Preston Rd., Suite 660, PMB 560
Dallas, TX 75230

P: 214-334-6065
F: 214-504-2289
E: jcelum@celumlaw.com

On Apr 15, 2015, at 2:06 PM, Newberg, Brad R. <BNewberg@mcguirewoods.com> wrote:

We will allow you until this Thursday at 5:00 per your request to get us the "materials" as you put it, but we consider materials—especially given that responses were due last week—to include responsive documents.

Brad R. Newberg
McGuireWoods LLP
1750 Tysons Boulevard
Suite 1800
Tysons Corner, VA 22102-4215
703.712.5061 (Direct Line)
703.712.5187 (Fax)
bnewberg@mcguirewoods.com
http://www.mcguirewoods.com
Brad R. Newberg Profile

From: jcelum@celumlaw.com [mailto:jcelum@celumlaw.com]
Sent: Wednesday, April 15, 2015 2:50 PM
To: Newberg, Brad R.
Cc: Melissa Replogle; DeFord, Amanda L.
Subject: Re: Failure to deliver discovery

Brad,

I have been working to get all of the updated responses to interrogatories completed and verified by Mr. Barnaby. It is his busiest time of the year and his business depends on him to be there working each day. I am working on it, but I cannot send you anything until he is able to complete the responses.

Given our agreement to extend the prettiest deadlines in this case, will you allow us until this Thursday at 5:00 to get you the materials?

Julie Celum Garrigue
214-334-6065

On Apr 15, 2015, at 11:38 AM, Newberg, Brad R. <BNewberg@mcguirewoods.com> wrote:

> Julie, we still haven't received any responses or documents.
>
> Sent from my iPhone
>
> On Apr 13, 2015, at 6:21 PM, Julie Celum Garrigue <jcelum@celumlaw.com> wrote:
>
> > Hi Brad.
> >
> > I know this was on my calendar, but I have searched and searched and do not see the entry. I will get you our revised responses, sans objections, first thing tomorrow morning.
> >
> > Julie Celum Garrigue
> >
> > Celum Law Firm, PLLC
> > 11700 Preston Rd., Suite 660, PMB 560
> > Dallas, TX 75230
> >
> > P: 214-334-6065
> > F: 214-504-2289

E: jcelum@celumlaw.com

On Apr 12, 2015, at 12:21 PM, Newberg, Brad R. <BNewberg@mcguirewoods.com> wrote:

Julie, I believe that all of Barnaby's discovery responses, including its production of documents, pursuant to the TTAB's Order was due this past Friday, but we did not receive anything. Please advise. Thank you.

<Active_66643690_1_4-28-2015 - Ltr to Garrigue re Discovery Deficiencies.PDF>

EXHIBIT 8
to
DeFord Declaration

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Clockwork IP, LLC	§	Mark: COMFORT CLUB
	§	
Petitioner,	§	
	§	
v.	§	Cancellation No. 92057941
	§	In re Registration No. 3618331
Barnaby Heating & Air	§	
	§	
	§	
Respondent.	§	

PETITIONER'S FIRST SET OF REQUESTS FOR ADMISSIONS TO RESPONDENT

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Petitioner Clockwork IP, LLC requests that Respondent Barnaby Heating & Air serve sworn answers to Petitioner's First Set of Requests for Admissions at the offices of Petitioner's counsel, Purvi J. Patel, Haynes and Boone, L.L.P., 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, within thirty-five (35) days after service.

DEFINITIONS

The following definitions apply to, and are deemed to be incorporated into, each of the Requests for Admissions herein.

A. "SGI" refers to Success Group International, an entity that was related to Petitioner but was recently sold. SGI includes a family of organizations including AirTime 500, Plumbers' Success International, Electricians' Success International, and Roofers' Success International.

B. "AirTime 500" or "AirTime" refers to an SGI entity that is dedicated to helping independent HVAC contractors succeed by providing a comprehensive set of operational and knowledge tools, including pricing systems, rebates, incentive systems, and training and networking opportunities.

C. "Success Day" and "Success Academy" refers to a periodic events, training seminars, and workshops for AirTime 500 Contractors. CONGRESS franchise events, SGI EXPO events, BRAND

DOMINANCE events, and Senior Tech events refer to periodic events, training seminars, and workshops sponsored and/or held by Petitioner or its affiliates.

D. "Person" is defined as any natural person or any business, legal, or governmental entity or association.

E. "Commerce" signifies commerce that the U.S. Congress may lawfully regulate. The phrase "use in commerce" is defined in Section 45 of the Trademark Act, 15 U.S.C. § 1127, to mean that a mark shall be deemed to be in use in commerce "(1) on goods when – (A) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and (B) the goods are sold or transported in commerce, and (2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services."

F. "Date of first use" refers to the date of first use in the United States unless otherwise stated.

G. The term "goods" and the term "services," in the singular or plural form, mean both "goods and services."

H. ""Respondent's Mark" means the alleged mark COMFORTCLUB as shown in Respondent's U.S. Registration No. 3,618,331, unless otherwise stated. "Respondent's services" means the services identified in Respondent's U.S. Registration No. 3,618,331, unless otherwise stated.

I. "Petitioner's Mark" means the COMFORTCLUB mark, used by Petitioner at least as early as 2006, in connection with electrical services, plumbing, and heating and air conditioning services, and later covered by U.S. Application Serial No. 85/880,911. Unless otherwise stated. "Petitioner's services" means the services identified in Respondent's U.S. Application Serial No. 85/880,911.

J. The terms "all" and "each" shall be constructed as all and each.

K. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

L. The use of the singular form of any word shall include within its meaning the plural form of the word, and vice versa.

M. The use of the masculine form of a pronoun shall include also within its meaning the feminine form of the pronoun so used, and vice versa.

N. The use of any tense of any verb shall include also within its meaning all other tenses of the verb so used.

INSTRUCTIONS

Applicant is hereby advised that a failure to specifically deny any request will be taken as an admission of the truth requested.

REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

Respondent has no valid rights in the mark COMFORTCLUB or any variation thereof. At no time was Respondent the owner of COMFORTCLUB.

REQUEST FOR ADMISSION NO. 2:

Petitioner is the rightful owner of the COMFORTCLUB Mark as used for Petitioner's services and Respondent's services in the U.S.

REQUEST FOR ADMISSION NO. 3:

At no time was Respondent the owner of COMFORTCLUB.

REQUEST FOR ADMISSION NO. 4:

Petitioner's Mark has been in use in interstate commerce by Petitioner and/or licensees of Petitioner since at least as early as 2006.

REQUEST FOR ADMISSION NO. 5:

Respondent has been an AirTime 500 member and licensee of Petitioner since August 21, 2007. In

signing the AirTime Member Agreement, Respondent agreed that "AirTime wholly owns and/or has protectable legal rights in and to the AirTime Resources whether ...(b) the AirTime Resources are subject to copyright, trademark, tradename, and/or patent rights of AirTime ..." In the Member Agreement, Respondent agreed "[n]ot to use any or all of the AirTime Resources for any purpose other than your valid participation in the AirTime Program...[and N]othing in this Agreement shall be construed as conveying to you ...(ii) any license to use, sell, exploit, copy or further develop any such AirTime Resources." Petitioner's Mark falls under the umbrella of the term "AirTime Resources" as described in said Member Agreement.

REQUEST FOR ADMISSION NO. 6:

Respondent attended an SGI "Senior Tech" course in March, 2008. Petitioner's COMFORTCLUB Mark and Petitioner's services were discussed and promoted to Airtime members and licensees at the SGI "Senior Tech" course in March, 2008.

REQUEST FOR ADMISSION NO. 7:

Respondent, without the authorization of Petitioner, filed Application No. 77/420,784 for COMFORTCLUB after attending an SGI course covering Petitioner's services rendered under Petitioner's Mark.

REQUEST FOR ADMISSION NO. 8:

At all relevant times, Respondent's use of COMFORTCLUB was only as a licensee of Petitioner pursuant to Respondent's AirTime Member Agreement. Respondent was never an owner of the COMFORTCLUB mark.

REQUEST FOR ADMISSION NO. 9:

Respondent's Application No. 77/420,784 for Respondent's Mark was filed fraudulently. Respondent's Mark is thus void.

REQUEST FOR ADMISSION NO. 10:

Petitioner used the mark COMFORTCLUB in U.S. commerce before any use of the mark COMFORTCLUB in U.S. commerce by Respondent commenced.

REQUEST FOR ADMISSION NO. 11:

Prior to March 13, 2008, the filing of Application No. 77/420,784, Respondent was aware of Petitioner's senior and prior right in Petitioner's Mark for both Petitioner's services and Respondent's services.

REQUEST FOR ADMISSION NO. 12:

Respondent's Mark is identical to Petitioner's Mark.

REQUEST FOR ADMISSION NO. 13:

Respondent's Mark is confusingly similar to Petitioner's Mark.

REQUEST FOR ADMISSION NO. 14:

Respondent's services are the same as Petitioner's services.

REQUEST FOR ADMISSION NO. 15:

Respondent's services are sold through the same channels of trade as Petitioner's services and directed to the same consumers.

REQUEST FOR ADMISSION NO. 16:

Respondent is no longer an AirTime Member and is using the COMFORTCLUB mark without authorization from Petitioner.

REQUEST FOR ADMISSION NO. 17:

Respondent's Mark so closely resembles Petitioner's Mark such as to cause confusion, mistake, or deception, and/or to cause the consuming public to believe that Respondent's services marketed or sold in connection with Respondent's Mark originate with or are sponsored, endorsed, licensed, authorized and/or affiliated or connected with Petitioner and/or Petitioner's services in violation of Section 2(d) of the Lanham Act.

REQUEST FOR ADMISSION NO. 18:

Petitioner is and will be damaged by registration of Respondent's Mark.

REQUEST FOR ADMISSION NO. 19:

Petitioner's rights in Petitioner's Mark predate any use by Respondent of Respondent's Mark in U.S. commerce.

REQUEST FOR ADMISSION NO. 20:

All use of the COMFORTCLUB mark by Respondent inured to the benefit of Petitioner, the rightful owner of the COMFORTCLUB mark in the U.S.

REQUEST FOR ADMISSION NO. 21:

On March 13, 2008, Respondent's Owner and Principle Partner, Mr. Charles Barnaby, was aware of Petitioner's senior rights in COMFORTCLUB but signed a fraudulent declaration in support of Respondent's Application No. 77/420,784, with an intent to deceive the U.S. Trademark Office into granting registration of Respondent's Mark.

REQUEST FOR ADMISSION NO. 22:

On March 13, 2008, Respondent's Owner and Principle Partner, Mr. Charles Barnaby, was aware of that it was not the rightful owner of the COMFORTCLUB Mark and Application No. 77/420,784, but signed a fraudulent declaration in support of Respondent's application for registration of Respondent's Mark, with an intent to deceive the U.S. Trademark Office into granting registration of Respondent's Mark.

REQUEST FOR ADMISSION NO. 23:

Respondent's Declaration in Application No. 77/420,784 stating that "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive...." is false.

REQUEST FOR ADMISSION NO. 24:

Petitioner established rights in the United States in its COMFORTCLUB Mark prior to 2008.

REQUEST FOR ADMISSION No. 25:

Since as early as 2006, Petitioner has established extensive, common-law rights in COMFORTCLUB Mark.

REQUEST FOR ADMISSION NO. 26:

Petitioner's rights in COMFORTCLUB date from prior to the filing date of Respondent's Mark or

Respondent's alleged use in United States commerce of Respondent's Mark.

REQUEST FOR ADMISSION NO. 27:

Respondent's Mark is not entitled to continued registration pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1125(d) because it is likely to cause confusion with the Petitioner's Mark.

REQUEST FOR ADMISSION NO. 28:

Applicant committed fraud on the U.S. Patent and Trademark Office.

REQUEST FOR ADMISSION NO. 29:

Respondent's First Affirmative Defense in paragraph 41 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

REQUEST FOR ADMISSION NO. 30:

Respondent's Second Affirmative Defense in paragraph 42 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

REQUEST FOR ADMISSION NO. 31:

Respondent's Third Affirmative Defense in paragraph 43 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

REQUEST FOR ADMISSION NO. 32:

Respondent's Fourth Affirmative Defense in paragraph 44 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

REQUEST FOR ADMISSION NO. 33:

Respondent's Fifth Affirmative Defense in paragraph 45 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

REQUEST FOR ADMISSION NO. 34:

Respondent's Sixth Affirmative Defense in paragraph 46 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

REQUEST FOR ADMISSION NO. 35:

Respondent's Seventh Affirmative Defense in paragraph 47 of its Answer to Petitioner's Petition to

Cancel is without merit and unsupported by evidence.

REQUEST FOR ADMISSION NO. 36:

Respondent's Eighth Affirmative Defense in paragraph 48 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

REQUEST FOR ADMISSION NO. 37:

Respondent's Ninth Affirmative Defense in paragraph 49 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

REQUEST FOR ADMISSION NO. 38:

Respondent's Tenth Affirmative Defense in paragraph 50 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

REQUEST FOR ADMISSION NO. 39:

Respondent's Eleventh Affirmative Defense in paragraph 51 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

REQUEST FOR ADMISSION NO. 40:

Petitioner's Mark is distinctive.

REQUEST FOR ADMISSION NO. 41:

COMFORTCLUB is distinctive as applied to Respondent's services.

REQUEST FOR ADMISSION NO. 42:

The COMFORTCLUB mark is distinctive as applied to Petitioner's services.

REQUEST FOR ADMISSION NO. 43:

Respondent adopted Respondent's Mark after learning of Petitioner's use of Petitioner's Mark.

REQUEST FOR ADMISSION NO. 44:

Respondent's Mark should be cancelled.

REQUEST FOR ADMISSION NO. 45:

This Petition to Cancel should be granted on the basis of a likelihood of confusion and fraud on the Trademark Office.

Respectfully submitted,

CLOCKWORK IP, LLC

Date: June 4, 2014

Purvi J. Patel, *Attorney for Petitioner*
Haynes and Boone, LLP
2323 Victory Avenue, Suite 700
Dallas, TX 75219
Phone: 214-651-5917
Facsimile: 214-200-0812
patelp@haynesboone.com

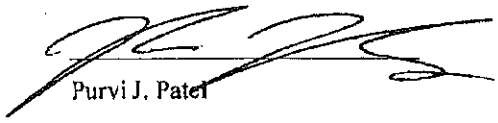
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Clockwork IP, LLC	§	Mark: COMFORT CLUB
	§	
Petitioner,	§	
	§	
v.	§	Cancellation No. 92057941
	§	In re Registration No. 3618331
Barnaby Heating & Air	§	
	§	
	§	
Respondent.	§	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 4th day of June, 2014, a copy of the foregoing *Petitioner's Requests for Admissions to Respondent* was served via first class mail, postage prepaid, on the following:

Julie Celum Garrigue, Esq.
Celum Law Firm, PLLC
11700 Preston Rd.,
Suite 660, PMB 560
Dallas, TX 75230



Purvi J. Patel

EXHIBIT 9
to
DeFord Declaration

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration No. 3,618,331

Registration Date: May 12, 2009

Mark: COMFORTCLUB

Clockwork IP, LLC	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No. 92057941
	)	
BARNABY HEATING & AIR, LLC	)	
	)	
Respondent.	)	

RESPONDENT'S OBJECTIONS AND RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES, FIRST REQUESTS FOR PRODUCTION, AND FIRST REQUESTS FOR ADMISSION

TO: PETITIONER CLOCKWORK IP, LLC AND ITS COUNSEL OF RECORD:

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and TBMP § 403, et seq., Respondent Barnaby Heating & Air, LLC ("Barnaby") serves its Objections and Answers to Petitioner's First Set of Interrogatories, Petitioner's First Requests for Production of Documents and Petitioner's First Requests for Admission.

GENERAL OBJECTIONS

Respondent objects to the Petitioner's First Set of Interrogatories, Petitioner's First Request for Production, and First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014.

Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone-Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent also objects to the Petitioner's discovery requests to the extent that Respondent is being forced to respond to Petitioner's discovery requests in violation of TBMP § 403, et seq., and has not been provided sufficient time under the Federal Rules of Civil Procedure and the TBMP to provide responses to Petitioner's discovery requests. Given service on July 2, 2014, Respondent has had less than 14 days to provide responses to Petitioner's discovery. For these reasons, Respondent objects to the foregoing discovery in its entirety.

Respondent objects generally to the definitions and instructions preceding the Petitioner's First Set of Interrogatories, Petitioner's First Requests for Production and Petitioner's First Requests for Admission to the extent they attempt to re-define commonly used words. Respondent, in answering these interrogatories will afford the words contained therein their common, ordinary meaning, except as the Federal Rules of Civil Procedure may specifically define them.

Respondent further objects to the definitions and instructions preceding the Petitioner's First Set of Interrogatories, Petitioner's First Requests for Production and Petitioner's First Requests for Admission to the extent that the requests seek to impose additional or different obligations upon Respondent other than those obligations that are placed on Respondent by the Federal Rules of Civil Procedure, the TBMP and the Trademark Trial and Appeal Board. Respondent will answer these interrogatories in accordance with the applicable rules.

Respondent also objects to the extent these requests are propounded on behalf of entities that are not parties to this litigation, such as "SGI", "AirTime", "AirTime 500", "Success Day", "Success Academy", "CONGRESS", "SGI EXPO", "BRAND DOMINANCE", and "Senior Tech." The pleadings in this matter do not indicate how these entities are related to this litigation and without more Respondent is unable to

adequately respond to Petitioner's discovery requests relating to these various entities. Respondent objects to any requests relating to these various entities because these requests cause Respondent to speculate. Respondent also objects to each of the discovery requests made by, or on behalf of the entities named above, based upon their ambiguity and vagueness, given Respondent unfamiliarity with these entities.

INTERROGATORIES

INTERROGATORY NO.1:

Describe in detail how Respondent's Mark was first conceived of by Respondent.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent objects to this request to the extent it requires the discovery of confidential commercial information. See FRCP 26(c); *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 10 USPQ2d 1671 (TTAB 1988). Respondent also objects to the extent this request places an undue burden on Respondent that outweighs its likely benefit. FED. R. CIV. P. 26(b)(2)(C)(iii). Subject to the foregoing objections, and without waiving same, Respondent answers as follows:

Respondent's, Mr. Charlie Barnaby and his nephew, conceived of the mark.

INTERROGATORY NO. 2:

State in detail the reasons for Respondent' s selection of COMFORTCLUB and the filing of U.S.

RESPONDENT'S OBJECTIONS AND RESPONSES TO PETITIONER'S FIRST REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO.1:

Respondent has no valid rights in the mark COMFORTCLUB or any variation thereof. At no time was Respondent the owner of COMFORTCLUB.

Answer:

Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 2:

Petitioner is the rightful owner of the COMFORTCLUB Mark as used for Petitioner's services and Respondent's services in the U.S.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.* Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 3:

At no time was Respondent the owner of COMFORTCLUB.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 4:

Petitioner's Mark has been in use in interstate commerce by Petitioner and/or licensees of Petitioner since

at least as early as 2006.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.* Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 5:

Respondent has been an AirTime 500 member and licensee of Petitioner since August 21, 2007, by signing the AirTime Member Agreement, Respondent agreed that "AirTime wholly owns and/or has protectable legal rights in and to the AirTime Resources whether ...(b) the AirTime Resources are subject to copyright, trademark ,tradename, and/or patent rights of AirTime ..." In the Member Agreement,

Respondent agreed "[n]ot to use any or all of the AirTime Resources for any purpose other than your valid participation in the AirTime Program . ..[and N]othing in this Agreement shall be construed as conveying to you ...(ii) any license to use, sell, exploit, .copy or further develop any such AirTime Resources." Petitioner's Mark falls under the umbrella of the term "AirTime Resources" as described in said Member Agreement.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not

receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.* Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 6:

Respondent attended an SGI "Senior Tech" course in March, 2008. ·Petitioner's COMFORTCLUB Mark and Petitioner's services were discussed and promoted to Airtime members and licensees at the SGJ "Senior Tech" course in March, 2008.

Answer:

Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not

receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.* Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 7:

Respondent, without the authorization of Petitioner, filed Application · No. 77/420,784 for COMFORTCLUB after attending an SGI course covering Petitioner's services rendered under Petitioner's Mark.

Answer:

Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not

receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.* Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 8:

At all relevant times, Respondent's use of COMFORTCLUB was only as a licensee of Petitioner pursuant to Respondent's AirTime Member Agreement. Respondent was never an owner of the COMFORTCLUB mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of

Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.* Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 9:

Respondent' s Application No. 77/420,784 for Respondent's Mark was filed fraudulently. Respondent' s Mark is thus void.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the

morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.* Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 10:

Petitioner used the mark COMFORTCLUB m U.S. commerce before any use of the mark COMFORTCLUB in U.S. commerce by Respondent commenced.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to

extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.* Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 11:

Prior to March 13, 2008, the filing of Application No. 77/420,784, Respondent was aware of Petitioner's senior and prior right in Petitioner's Mark for both Petitioner's services and Respondent's services.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of

documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.* Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 12:

Respondent's Mark is identical to Petitioner's Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely

request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.* Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 13:

Respondent's Mark is confusingly similar to Petitioner's Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also

objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.* Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 14:

Respondent's services are the same as Petitioner's services.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the

same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 15:

Respondent's services are sold through the same channels of trade as Petitioner's services and directed to the same consumers.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over,

Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 16:

Respondent is no longer an AirTime Member and is using the COMFORTCLUB mark without authorization from Petitioner.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over,

Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objection(s), as drafted, Respondent is unable to admit or deny this request.

REQUEST FOR ADMISSION NO. 17:

Respondent's Mark so closely resembles Petitioner's Mark such as to cause confusion, mistake, or deception, and/or to cause the consuming public to believe that Respondent's services marketed or sold in connection with Respondent's Mark originate with or are sponsored, endorsed, licensed, authorized and/or affiliated or connected with Petitioner and/or Petitioner' s services in violation of Section 2(d) of the Lanham Act.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent

via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 18:

Petitioner is and will be damaged by registration of Respondent's Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation

and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 19:

Petitioner's rights in Petitioner's Mark predate any use by Respondent of Respondent' s Mark in U.S. commerce.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation

and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 20:

All use of the COMFORTCLUB mark by Respondent inured to the benefit of Petitioner, the rightful owner of the COMFORTCLUB mark in the U.S.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the

same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 21:

On March 13, 2008, Respondent's Owner and Principle Partner, Mr. Charles Barnaby, was aware of Petitioner's senior rights in COMFORTCLUB but signed a fraudulent declaration in support of Respondent's Application No. 77/420,784, with an intent to deceive. the U.S. Trademark Office into granting registration of Respondent's Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as

such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO.22:

On March 13, 2008, Respondent's Owner and Principle Partner, Mr. Charles Barnaby, was aware of that it was not the rightful owner of the COMFORTCLUB Mark and Application No. 77/420,784, but signed a fraudulent declaration in support of Respondent's application for registration of Respondent's Mark, with an intent to deceive the U.S. Trademark Office into granting registration of Respondent's Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 23:

Respondent's Declaration in Application No. 77/420,784 stating that "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive...." is false.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period.

See Smith International, Inc. v. Olin Corp., 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 24:

Petitioner established rights in the United States in its COMFORTCLUB Mark prior to 2008.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period.

See Smith International, Inc. v. Olin Corp., 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION No. 25:

Since as early as 2006, Petitioner has established extensive, common-law rights in COMFORTCLUB Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v.*

Gulf Oil Corp., 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 26:

Petitioner's rights in COMFORTCLUB date from prior to the filing date of Respondent's Mark or Respondent' s alleged use in United States commerce of Respondent's Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198

UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 27:

Respondent' s Mark is not entitled to continued registration pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1 125(d) because it is likely to cause confusion with the Petitioner' s Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v.*

Gulf Oil Corp., 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 28:

Applicant committed fraud on the U.S. Patent and Trademark Office.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 29:

Respondent's First Affirmative Defense in paragraph 41 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 30:

Respondent' s Second Affirmative Defense in paragraph 42 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 31:

Respondent' s Third Affirmative Defense in paragraph 43 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also

objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 32:

Respondent' s Fourth Affirmative Defense in paragraph 44 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as

such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.* Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 33:

Respondent' s Fifth Affirmative Defense in paragraph 45 of its Answer to Petitioner' s Petition to Cancel is without merit and unsupported by evidence.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the

same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.* Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 34:

Respondent's Sixth Affirmative Defense in paragraph 46 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to

provide a response to Petitioner's request. *Id.* Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 35:

Respondent' s Seventh Affirmative Defense in paragraph 47 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.* Subject to the foregoing objection(s), denied.

Dated: July 15, 2014

Respectfully,

Barnaby Heating & Air, LLC

/s/ Julie Celum Garrigue
JULIE CELUM GARRIGUE

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Attorney for Respondent
Barnaby Heating & Air, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **RESPONDENT'S OBJECTIONS AND RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES, FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS, AND FIRST REQUEST FOR ADMISSION** was served on counsel for Petitioner, this 15th day of July 2014, by sending the same via Federal Express to:

Purvi J. Patel.
Haynes and Boone, LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219

/s/ Julie Celum Garrigue
JULIE CELUM GARRIGUE

EXHIBIT 10
to
DeFord Declaration

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration No. 3,618,331

Registration Date: May 12, 2009

Mark: COMFORTCLUB

Clockwork IP, LLC	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No. 92057941
	)	
BARNABY HEATING & AIR, LLC	)	
	)	
Respondent.	)	

RESPONDENT'S FIRST AMENDED OBJECTIONS AND RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES, FIRST REQUESTS FOR PRODUCTION, AND FIRST REQUESTS FOR ADMISSION

TO: PETITIONER CLOCKWORK IP, LLC AND ITS COUNSEL OF RECORD:

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and TBMP § 403, et seq., Respondent Barnaby Heating & Air, LLC ("Barnaby") serves its First Amended Objections and Answers to Petitioner's First Set of Interrogatories, Petitioner's First Requests for Production of Documents and Petitioner's First Requests for Admission.

GENERAL OBJECTIONS

Respondent objects to the Petitioner's First Set of Interrogatories, Petitioner's First Request for Production, and First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests appear to be dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014.

Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone-Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent reurges its objection to the definitions and instructions preceding the Petitioner's First Set of Interrogatories, Petitioner's First Requests for Production and Petitioner's First Requests for Admission to the extent they attempt to re-define commonly used words. Respondent, in answering these interrogatories will afford the words contained therein their common, ordinary meaning, except as the Federal Rules of Civil Procedure may specifically define them.

Respondent further objects to the definitions and instructions preceding the Petitioner's First Set of Interrogatories, Petitioner's First Requests for Production and Petitioner's First Requests for Admission to the extent that the requests seek to impose additional or different obligations upon Respondent other than those obligations that are placed on Respondent by the Federal Rules of Civil Procedure, the TBMP and the Trademark Trial and Appeal Board. Respondent will answer these interrogatories in accordance with the applicable rules.

Respondent also objects to the extent these requests are propounded on behalf of entities that are not parties to this litigation, such as Clockwork "SGI", "AirTime", "AirTime 500", "Success Day", "Success Academy", "CONGRESS", "SGI EXPO", "BRAND DOMINANCE", and "Senior Tech." The pleadings in this matter do not indicate how these entities are related to this litigation and without more Respondent is unable to adequately respond to Petitioner's discovery requests relating to these various entities. Respondent objects to any requests relating to these various entities because these requests cause Respondent to speculate. Respondent also objects to each of the discovery requests made by, or on behalf of the entities named above, based upon their ambiguity and vagueness, given Respondent unfamiliarity with these entities.

INTERROGATORIES

INTERROGATORY NO. 1:

REQUEST FOR PRODUCTION NO. 90:

Any written report, memorandum, opinion, or other written documents and things regarding either Respondent's Mark or Petitioner's Marks that was prepared by any expert witness, regardless of whether Respondent presently intends to call such expert witness in this proceeding.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, none. Respondent specifically reserves the right to supplement this response.

RESPONDENT'S OBJECTIONS AND RESPONSES
TO PETITIONER'S FIRST REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO.1:

Respondent has no valid rights in the mark COMFORTCLUB or any variation thereof. At no time was Respondent the owner of COMFORTCLUB.

Answer:

Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 2:

Petitioner is the rightful owner of the COMFORTCLUB Mark as used for Petitioner's services and Respondent's services in the U.S.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to

extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 3:

At no time was Respondent the owner of COMFORTCLUB.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 4:

Petitioner's Mark has been in use in interstate commerce by Petitioner and/or licensees of Petitioner since at least as early as 2006.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 5:

Respondent has been an AirTime 500 member and licensee of Petitioner since August 21, 2007, by signing the AirTime Member Agreement, Respondent agreed that "AirTime wholly owns and/or has protectable legal rights in and to the AirTime Resources whether ...(b) the AirTime Resources are subject to copyright, trademark ,tradename, and/or patent rights of AirTime ..." In the Member Agreement, Respondent agreed "[n]ot to use any or all of the AirTime Resources for any purpose other than your valid participation in the AirTime Program . ..[and N]othing in this Agreement shall be construed as conveying to you ...(ii) any license to use, sell, exploit, .copy or further develop any such AirTime Resources." Petitioner's Mark falls under the umbrella of the term "AirTime Resources" as described in said Member Agreement.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of

discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 6:

Respondent attended an SGI "Senior Tech" course in March, 2008. Petitioner's COMFORTCLUB Mark and Petitioner's services were discussed and promoted to Airtime members and licensees at the SGJ "Senior Tech" course in March, 2008.

Answer:

Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this

case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 7:

Respondent, without the authorization of Petitioner, filed Application No. 77/420,784 for COMFORTCLUB after attending an SGI course covering Petitioner's services rendered under Petitioner's Mark.

Answer:

Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 8:

At all relevant times, Respondent's use of COMFORTCLUB was only as a licensee of Petitioner pursuant to Respondent's AirTime Member Agreement. Respondent was never an owner of the COMFORTCLUB

mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 9:

Respondent' s Application No. 77/420,784 for Respondent's Mark was filed fraudulently. Respondent' s Mark is thus void.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of

documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 10:

Petitioner used the mark COMFORTCLUB m U.S. commerce before any use of the mark COMFORTCLUB in U.S. commerce by Respondent commenced.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 11:

Prior to March 13, 2008, the filing of Application No. 77/420,784, Respondent was aware of Petitioner's senior and prior right in Petitioner's Mark for both Petitioner's services and Respondent's services.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 12:

Respondent's Mark is identical to Petitioner's Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also

dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 13:

Respondent's Mark is confusingly similar to Petitioner's Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 14:

Respondent's services are the same as Petitioner's services.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 15:

Respondent's services are sold through the same channels of trade as Petitioner's services and directed to the same consumers.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery

devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 16:

Respondent is no longer an AirTime Member and is using the COMFORTCLUB mark without authorization from Petitioner.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), as drafted, Respondent is unable to admit or deny this request.

REQUEST FOR ADMISSION NO. 17:

Respondent's Mark so closely resembles Petitioner's Mark such as to cause confusion, mistake, or

deception, and/or to cause the consuming public to believe that Respondent's services marketed or sold in connection with Respondent's Mark originate with or are sponsored, endorsed, licensed, authorized and/or affiliated or connected with Petitioner and/or Petitioner' s services in violation of Section 2(d) of the Lanham Act.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 18:

Petitioner is and will be damaged by registration of Respondent's Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the

morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 19:

Petitioner's rights in Petitioner's Mark predate any use by Respondent of Respondent' s Mark in U.S. commerce.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 20:

All use of the COMFORTCLUB mark by Respondent inured to the benefit of Petitioner, the rightful owner of the COMFORTCLUB mark in the U.S.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 21:

On March 13, 2008, Respondent's Owner and Principle Partner, Mr. Charles Barnaby, was aware of Petitioner's senior rights in COMFORTCLUB but signed a fraudulent declaration in support of Respondent's Application No. 77/420,784, with an intent to deceive. the U.S. Trademark Office into granting registration of Respondent's Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also

dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO.22:

On March 13, 2008, Respondent's Owner and Principle Partner, Mr. Charles Barnaby, was aware of that it was not the rightful owner of the COMFORTCLUB Mark and Application No. 77/420,784, but signed a fraudulent declaration in support of Respondent's application for registration of Respondent's Mark, with an intent to deceive the U.S. Trademark Office into granting registration of Respondent's Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 23:

Respondent's Declaration in Application No. 77/420,784 stating that "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive...." is false.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 24:

Petitioner established rights in the United States in its COMFORTCLUB Mark prior to 2008.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the

date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION No. 25:

Since as early as 2006, Petitioner has established extensive, common-law rights in COMFORTCLUB Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the

discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 26:

Petitioner's rights in COMFORTCLUB date from prior to the filing date of Respondent's Mark or Respondent' s alleged use in United States commerce of Respondent's Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 27:

Respondent' s Mark is not entitled to continued registration pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1 125(d) because it is likely to cause confusion with the Petitioner' s Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but

Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 28:

Applicant committed fraud on the U.S. Patent and Trademark Office.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 29:

Respondent's First Affirmative Defense in paragraph 41 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 30:

Respondent' s Second Affirmative Defense in paragraph 42 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to

extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 31:

Respondent' s Third Affirmative Defense in paragraph 43 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 32:

Respondent' s Fourth Affirmative Defense in paragraph 44 of its Answer to Petitioner's Petition to Cancel

is without merit and unsupported by evidence.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 33:

Respondent' s Fifth Affirmative Defense in paragraph 45 of its Answer to Petitioner' s Petition to Cancel is without merit and unsupported by evidence.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of

documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 34:

Respondent's Sixth Affirmative Defense in paragraph 46 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 35:

Respondent' s Seventh Affirmative Defense in paragraph 47 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

Dated: September 25, 2014

Respectfully,

Barnaby Heating & Air, LLC

/s/ Julie Celum Garrigue
JULIE CELUM GARRIGUE

Celum Law Firm, PLLC
11700 Preston Rd.
Suite 660, PMB 560
Dallas, Texas 75230
P: 214.334.6065
F: 214.504.2289
E: Jcelum@celumlaw.com

Attorney for Respondent
Barnaby Heating & Air, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **RESPONDENT'S FIRST AMENDED OBJECTIONS AND RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES, FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS, AND FIRST REQUEST FOR ADMISSION** was served on counsel for Petitioner, this 24th day of September 2014, by sending the same via Email to:

Purvi J. Patel
Purvi.Patel@haynesboone.com
Haynes and Boone, LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219

/s/ Julie Celum Garrigue
JULIE CELUM GARRIGUE

EXHIBIT 11
to
DeFord Declaration

Comfort Club

monthly

Membership No. P
A- 001053

ENTERED

left message 5/3

☐ 2011 ☐ = 12/2011

☐ **PLATINUM**
Scheduled Service
$29.95 per mo. / 98¢ per day
ALL benefits of GOLD CLUB
PLUS: Guaranteed same-day appointments. *FREE* repairs up to Level 5 as listed in the FixedRight Pricing™ guide.
Savings potential of $890 (or more) per year.

☐ **GOLD**
Scheduled Service
$19.95 per mo. / 65¢ per day
ALL benefits of SILVER CLUB
PLUS: Scheduled service to protect the system - extends its life, gains peak energy efficiency, keeps it clean, includes up to 2 pounds of refrigerant & filters & thermocouple. Guaranteed appointments within 24 hours. 20% off major services. *FREE* Level 1 repairs... no exclusions. *FREE* diagnostic service, and... 100% of your unused balance may be applied to a new heating or cooling system.
Savings of at least $354 per year.

☒ **SILVER**
Safety $11.95 per mo. / 39¢ per day
Guaranteed appointment within 48 hours. $29.95 Safety inspection. 10% discount on all repair services. *FREE* system rejuvenation twice per year (filters extra).
Savings of at least $216 per year!

Name (cardholder) DAVID Jordan Date 2-29-08

Address 8406 COVENTRY

City ROWLETT State TX Zip 75089

Phone (home) ~~472-405-5218~~ not working 972 533 4617 (work) 972-550-6900

Email address ~~[redacted]~~ DJORDAN3@UNITRIN.COM

TERMS: Monthly Investment $ 11.95 month Spring VMP 5/19/09

PRE-PAY INVESTMENT $ _____ **YEARS** _____

☒ ***Automatic Credit Card Debit.*** I understand that the monthly fee will continue until a written notice of termination is received at the corporate office. Allow up to two weeks fo[redacted]

Jan 5/15/08

Method of payment: (Please complete and [redacted] Discover ☐ AMEX ☐

Account [redacted]

Condensing Unit AMANA ASX16

Evaporator Coil AMANA

Furnace AMANA 01-2009 - Add 10.00 for filter 10.00 / 11.95 Total 21.95

Additional Equipment _____

Representative [signature] Date 2-29-08

Client Signature [signature] Date 2/29/08

I have read and agreed to the Terms & Conditions on the reverse side of this document.

BARNABY Heating & Air
TACLA 014319E

Regulated by the Texas Department Licensing
Texas Department of Licensing & Regulation
P.O. Box 12157, Austin, TX 78711
512.463.6599, FAX 512.475.2872

BARNABY - 000380

4620 Industrial St, Ste C • Rowlett, TX 75088
Phone 972.412.0150 • FAX 972.475.6813

08-CC-0001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CLOCKWORK IP, LLC	)	
	)	
Petitioner,	)	
	)	
v.	)	**Cancellation No. 92057941**
	)	**Reg. No. 3,618,331**
BARNABY HEATING & AIR, and McAFEE HEATING AND AIR CONDITIONING CO., INC.	)	
	)	
Respondents.	)	

DECLARATION OF CHELSEA CREW

I, Chelsea Crew, being duly sworn, state:

1. My name is Chelsea Crew. I am over the age of 18. I make the statements in this declaration based on my own personal knowledge and the official records of my employer, Clockwork Home Services ("Clockwork"), related to the facts discussed herein. I certify under oath that the statements made in this declaration are true to the best of my knowledge, information and belief.

2. I am currently employed by Clockwork and I am the Administrative Supervisor for Success Academy, an entity that offers training courses for members of companies that are or have been affiliated with Clockwork, such as Success Group International and AirTime. I manage all record keeping and materials for Success Academy courses, including the Success Academy "Senior Tech" course. I have held this role for Clockwork for at least six years and am also well aware of the records and materials that existed in the years preceding the date when I became Administrative Supervisor.

3. Our official records show that Charles Barnaby attended the March 17, 2008 "Senior Tech" Success Academy course in St. Louis. Attached to this Declaration as **Exhibit 1** is the "non-solicitation" agreement that Mr. Barnaby signed, which is required for those wishing to attend the "Senior Tech" course.

4. "COMFORTCLUB" is used extensively during the Senior Tech course, and those uses were prevalent during the Senior Tech course that Mr. Barnaby attended on March 17, 2008. The term is used (and was used in March 2008 and before) in the PowerPoint demonstration that participants, such as Mr. Barnaby, view during the course.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Executed this 21 day of May 2015 at in Sarasota, Florida.

Chelsea Crew

Chelsea Crew
Administrative Supervisor
Success Academy, Clockwork Home Services

EXHIBIT 1
to
Crew Declaration

Acknowledgement of Non-Solicitation Policy

Success Academy provides training sessions and educational programs for members of AirTime 500, PSI, ESI, One Hour Air Conditioning, Mr. Sparky, and Benjamin Franklin Plumbing and their employees for the purpose of training and educating attendees within different trades and professions.

In order to provide the best training and educational programs and materials for our members, it has been and continues to be one of the Policies of Success Academy that no member (or its employees) may directly or indirectly use any of our sponsored training sessions, courses or classes and/or our Scoreboard or other information, tools, or reports as a vehicle, forum or resource to identify, solicit or hire another member's employee or any employee of Success Academy or its affiliates without first obtaining the written permission of the current employer.

This Policy includes, but is not limited to: employees who attend any Success Academy sessions, courses or programs; employees who may be identified through the use of any Scoreboard information or publications; any featured Success Speakers; and employees who are mentioned in any Success Academy materials or publications.

It has come to the attention of Success Academy that on occasion certain members have attempted to hire employees of other members during or after Success Academy's sponsored training sessions or have used the Success Academy Crown Champion Scoreboard and/or Success Group International Scoreboard to identify potential employees who are already employed by other members.

Obviously, such activities violate the Policies of Success Academy.

In order to insure that these types of activities do not occur in the future, we are requesting that each member indicate their agreement to abide by all of the Policies of Success Academy as may be announced from time to time (including without limitation the Policy noted above) in order to continue to use the resources and training provided by Success Academy.

While we do not anticipate that any member will violate this or any of our other Policies, Success Academy reserves the right to take appropriate action in the event that future violations of this Policy occur including without limitation:

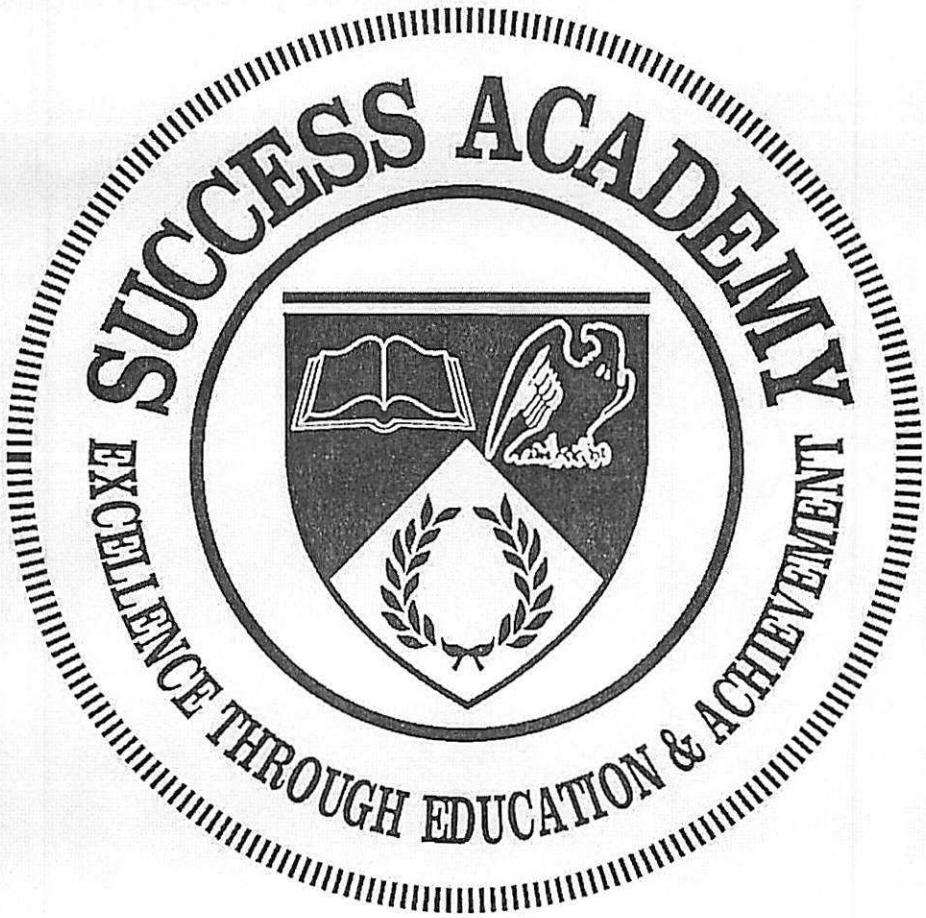
1) First violation: up to and including one year suspension from any and all Success Academy courses.
2) Second violation: up to and including permanent expulsion from any and all Success Academy courses.

I acknowledge and understand the above terms and conditions and agree, on behalf of my company, myself, any co-owners and any employees, to abide by them.

Name (print): Charles Barnaby (Signature) [signature]

Company Name: Barnaby Heating & Air

Date: 3-17-08 Name of Class: Senior Sales Technician



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